

ANDERSON EXHIBIT 3

TO

OPPOSITION TO EXCLUDE TESTIMONY
OF EXPERT MARK G. DUGGAN PH.D.

Depo-Gerzel -April -02-20-09I

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL)	
INDUSTRY AVERAGE WHOLESALE)	
PRICE LITIGATION)	MDL No. 1456
THIS DOCUMENT RELATES TO:)	
US ex rel Ven-A-Care of)	Civil Action No.
the Florida Keys, Inc.)	01-12257-PBS
v. Abbott Laboratories, Inc.)	
No. 07-CV-11618-PBS)	

10

VIDEOTAPED ORAL DEPOSITION OF APRIL GERZEL

11

February 20, 2009

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DEPOSITION upon videotaped oral examination, of the witness, APRIL GERZEL, taken on behalf of Ven-A-Care of the Florida Keys, Inc. in the above entitled cause pending in the United States District Court, District of Massachusetts, before TAMMY POZZI, Certified Shorthand Reporter in and for the State of Texas, on February 20, 2009, in the law offices of Jones Day, 77 West Wacker, 35th Floor, Chicago, Illinois, between the hours of 8:32 a.m. and 12:13 p.m., pursuant to due notice and the Federal Rules of Civil Procedure.

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Videographer

I N D E X

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PROCEEDINGS

THE VIDEOGRAPHER: We are on the
record. It is Friday, February 20th, 2009. It is
8:32 a.m. This is the beginning of tape 1.
Will the court reporter please swear
in the witness?

APRIL GERZEL,
having been first duly sworn, testified as follows:
EXAMINATION

BY MR. ANDERSON:

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11 Q. Good morning. Could you state your name
12 for the record, please?
13 A. April Gerzel.
14 Q. Have you gone by any other last names?
15 A. My maiden name.
16 Q. What was that?
17 A. April Harder.
18 Q. Harder?
19 A. Harder.
20 Q. Okay. Ms. Gerzel, I am Jarrett Anderson.
21 I represent the relator, Ven-A-Care of the Florida
22 Keys that's brought a lawsuit on behalf of the
23 government against Abbott.
24 You understand that you're being
25 deposed today, and that your testimony can be used as
0005
1 though it were in a court of law; is that --
2 A. Yes.
3 Q. Okay. And you understand you're under
4 oath?
5 A. Yes.
6 Q. Have you been deposed before?
7 A. No.
8 Q. Okay. A couple of important ground rules.
9 Number one, if for whatever reason you don't
10 understand my question, let me know and I'll rephrase
11 it so that there's no miscommunications and we can
12 rely upon your testimony. Is that agreeable?
13 A. Uh-huh. Yes.
14 Q. And, then, secondly, you've already caught
15 yourself, but you do have to answer verbally, you
16 can't just nod your head or -- or kind of do some
17 other nonverbal things that we do in conversation, so
18 that the court reporter can take it down.
19 A. Okay.
20 Q. And, lastly, since we do have a
21 transcription being made, let's make sure we don't
22 speak over one another like we might do if we were
23 just talking informally, okay?
24 A. Okay.
25 Q. All right. How long have you worked for
0006
1 Abbott?
2 A. 12 years.
3 Q. So roughly back to '97?
4 A. I started in December of '96.
5 Q. Okay. And have you always been in the
6 Pricing Department?
7 A. No.
8 Q. Where did you start with -- in Abbott?
9 A. I started in the Hospital Pharmaceutical --
10 or Hospital Products Division.
11 Q. Okay. What department?
12 A. Home Infusion.
13 Q. How long were you in Home Infusion?
14 A. Five years.
15 Q. So roughly until 2001 or so?
16 A. Correct.
17 Q. Were you there in May of 2001?
18 A. Yes.
19 Q. Do you recall there being some pretty
20 dramatic price decreases taken by the Home Infusion
21 grou- -- pardon me, the Hospital Products Division on

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some injectable and other products?

MS. FUMERTON: Objection, form.

A. No, I don't.

Q. (BY MR. ANDERSON): Okay. What did you do

in Home Infusion?

A. I was -- I -- I held various jobs.

Q. Uh-huh.

A. I was a Reimbursement Technician, a Reimbursement Specialist and a Financial Analyst.

Q. Did you start as a Reimbursement Technician?

A. Yes.

Q. Then you were promoted to a Reimbursement Specialist?

A. Yes.

Q. And then you took the position as Financial Analyst?

A. Yes.

Q. How many years were you either a Reimbursement Technician or a Reimbursement Specialist?

A. I was a technician for about a year and a half, and I was a specialist roughly two years.

Q. And what were your basic job duties in those positions?

A. As a technician, I was responsible for billing and trying to collect on Home Infusion claims.

Q. Were you involved in billings made by Home Infusion to Medicaid?

MS. FUMERTON: Objection, form.

A. I do believe so, yes.

Q. (BY MR. ANDERSON): Were you involved in billings by Abbott Home Infusion to private insurance?

A. Yes.

Q. And you did that for roughly three years, is that right?

A. I -- yes, I believe about three years.

Q. As a -- a -- a financial analyst what were your job duties?

A. I was responsible for performing what were called risk analysis to determine of the outstanding accounts receivable balances what was our risk to collecting all of those monies, and -- and how much we'd collect based on trends and history of what we had done over time.

Q. In your reimbursement role and in your financial analyst role at Abbott Hospital Products Home Infusion, did you become familiar with drug pricing?

MS. FUMERTON: Objection, form.

A. What do you mean when you say "familiar with"?

Q. (BY MR. ANDERSON): For instance, did you learn of some drug pricing terms?

MS. FUMERTON: Objection, form.

A. I don't -- I -- I don't recall our pricing structure.

Q. (BY MR. ANDERSON): Were you aware of a

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pricing term known as "AWP"?

A. I am aware of a pricing term called "AWP," but I don't recall when I actually became aware of that acronym.

Q. Do you think you were aware of AWP in the context of your reimbursement role at Home Infusion?

A. I don't recall.

Q. Before you went to work for Abbott, had you worked in the drug industry in any way?

A. No.

Q. Okay. What was your job prior to that?

A. My immediate job prior to that was at a company called Safety Guard.

Q. Okay. And what business are they in?

A. They made like plastic gloving, plastic gloves and things like that.

Q. Okay. Had you had any dealings with drug billings or drug reimbursement prior to your employment by Abbott Home Infusion?

A. No.

Q. All right. After you were an Abbott Home Infusion Financial Analyst, did you go to work in PPD?

A. Yes.

Q. In the Pricing Department?

A. Yes.

Q. So that would have been roughly 2001, correct?

A. Correct.

Q. And today you're still in the Pricing Department, correct?

A. Yes.

Q. So from 2001 to now, early 2009, have your job duties changed at Abbott PPD?

A. Yes, they have.

Q. Okay. What were your initial job duties?

A. Initially I was the Supervisor of Rebates.

Q. Rebates paid to whom?

A. Entities like pharmacy benefit managers, HMOs, health maintenance organizations.

Q. Were you involved at all in rebates paid by Abbott under the federal law know as -- known as OBRA '90?

MS. FUMERTON: Objection, form.

A. Managed care rebates under the --

Q. (BY MR. ANDERSON): No.

A. I -- I don't understand the question.

Q. Okay. Let me phrase it slightly differently. Have you ever been involved in the calculation of any pricing information or the payment of any rebates by Abbott to state Medicaid programs?

MS. FUMERTON: Objection, form.

A. Yes, I have.

Q. (BY MR. ANDERSON): Okay. But initially, that wasn't one of your job duties?

A. Correct.

Q. Okay. How long were you the supervisor of rebates to managed care entities and PBMs?

A. Roughly 14 months.

Q. And what was your next position in PPD?

A. My next position was Supervisor of

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18 Chargebacks and membership.
 19 Q. How long did you hold that?
 20 A. Roughly two years.
 21 Q. So that would have been, like, mid 2002
 22 through like two-thou- -- early 2005?
 23 A. It was early 2003 --
 24 Q. Okay.
 25 A. -- to at some point in 2005.

0012

1 Q. All right. And you were a Supervisor of
 2 Chargebacks. Can you describe what those basic job
 3 duties involved?
 4 A. Managing the chargeback team involved
 5 working with wholesalers regarding the chargebacks
 6 they submitted from themselves to Abbott on behalf of
 7 the products they sold to our contracted customers,
 8 as well as working with the wholesalers in reference
 9 to the deductions they may have taken when they
 10 disagreed with how Abbott had paid --
 11 Q. Okay.
 12 A. -- the chargebacks.
 13 Q. After your role as Supervisor of
 14 Chargebacks, what position did you take?
 15 A. After the chargeback area in Membership, I
 16 went to the Government Team.
 17 Q. What did that entail?
 18 A. When I initially started, I was responsible
 19 for the ASP calculation. And since then, I've moved
 20 on to various rolls in Government.
 21 Q. ASP calculations are calculations made with
 22 respect to Medicare?
 23 A. The MMA 2003.
 24 Q. Right. And by "MMA," you're referring to
 25 the Medicare program?

0013

1 A. Yes.
 2 Q. All right. What are your current job
 3 duties?
 4 A. My current job duties include managing the
 5 state contracting, federal contracting, and data
 6 maintenance.
 7 Q. By "contracting," are you referring to, for
 8 instance, state prison systems that may purchase
 9 drugs?
 10 A. No. I'm actually talking about
 11 supplemental contracts to the federal Medicaid
 12 program.
 13 Q. Is that also sometimes known as
 14 "supplemental rebate programs"?
 15 A. Correct.
 16 Q. And those supplemental rebate programs have
 17 to do with, for instance, a given Abbott brand drug
 18 having some preferred status on a Medicaid formulary?
 19 A. That's correct.
 20 MS. FUMERTON: Objection, form.
 21 A. That is correct.
 22 Q. (BY MR. ANDERSON): Okay. And in exchange
 23 for that status, Abbott pays a supplemental rebate in
 24 addition to any other rebates it may have been paying
 25 under federal law?

0014

1 A. That's correct.
 2 MS. FUMERTON: Objection, form.
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Q. (BY MR. ANDERSON): Thank you. Okay. In any of these roles, did you have job responsibilities or duties with respect to price reporting to pricing compendias such as FirstDataBank and Red Book?

A. Yes, I did.

Q. For what time period?

A. From roughly 2003 to 2005.

Q. Do you understand who held those job -- well, strike that.

Other than yourself for that time period, was there anyone else who was responsible for price reporting by Abbott to compendias such as FirstDataBank and Red Book?

A. No, it was my responsibility.

Q. Okay. Do you understand who has that responsibility now?

A. Yes, I do.

Q. Who?

A. Dana Chavira.

Q. Okay. And did she take over from you in 2005?

A. Yes, she did.

Q. Prior to --

A. Can I interject?

Q. Sure. How --

A. Actually, Dana did up until recently have that responsibility, and it moved, like, a couple of weeks ago --

Q. Okay.

A. -- to her manager Lisa Flanagan.

Q. Okay. Thank you. Prior to 2003, did you understand who was responsible for price reporting by Abbott to the compendia?

A. The whole time prior to 2003?

Q. No, immediately prior to --

A. Oh.

Q. -- 2003.

A. Oh, yes.

Q. And who was that?

A. Tina Calvert.

Q. And do you understand how long Tina held that role?

A. I don't.

Q. So if I'm understanding your testimony, it looks like the price reporting responsibilities to the compendia also coincided with your position as Supervisor of Chargebacks; is that true?

A. Correct. I was Supervisor of Chargebacks

and Membership, and I also held the responsibility of pricing to them.

Q. Is it your understanding the price reporting responsibilities go along with the Supervisor of Chargeback position?

MS. FUMERTON: Objection, form.

A. It did at the time I was supervisor.

Q. (BY MR. ANDERSON): Does it still?

A. No, it does not.

Q. Did it until a few weeks ago when Lisa Flanagan --

A. Yes, it did.

Q. Okay.

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14 A. Uh-huh.
 15 Q. Do you know why now that role of reporting
 16 prices to pricing services or compendia like
 17 FirstDataBank and Red Book has been transferred to
 18 Ms. Flanigan?
 19 A. I don't know. I would have to speculate as
 20 to why.
 21 Q. I don't want you to take a wild guess, but
 22 if you have some information, I would like to know
 23 it.
 24 A. I -- I don't --
 25 MS. FUMERTON: Objection, form.

0017
 1 A. -- know why.
 2 Q. (BY MR. ANDERSON): You don't know --
 3 A. I haven't been told by --
 4 Q. You haven't been -- you haven't been --
 5 A. I haven't been priv- -- privy to any
 6 conversation --
 7 Q. Okay.
 8 A. -- regarding that.
 9 Q. Did you receive any training or any other
 10 type of information as to how to report prices to the
 11 pricing services like FirstDataBank and Red Book?
 12 A. Yes.
 13 Q. From whom?
 14 A. From Tina Calvert.
 15 Q. Your predecessor?
 16 A. Correct.
 17 Q. Anyone else?
 18 A. No.
 19 Q. Have you ever received any instructions
 20 from any personnel in the PPD Pricing Department
 21 other than Ms. Calvert about price reporting to the
 22 compendia?

23 MS. FUMERTON: Objection, form.
 24 A. Not that I recall.
 25 Q. (BY MR. ANDERSON): Did you receive any
 0018
 1 instruction from PPD pricing managers such as Joe
 2 Fiske or Deb DeYoung regarding price reporting to the
 3 compendia?

4 MS. FUMERTON: Objection, form.
 5 A. We -- I'm not sure how to respond to that
 6 question. When you -- part of price reporting is
 7 also product reporting, and I did receive information
 8 from Deb DeYoung regarding government FDA indicative
 9 information to report to the government. Not
 10 specifically how to report it, but what to report.
 11 Q. (BY MR. ANDERSON): Okay. The FDA
 12 information that you're referring to would be
 13 clinical information?
 14 A. They are items like is it Medicaid or VA
 15 eligible, what is the market entry date. And there
 16 might be others, but I don't recall all the
 17 specifics.
 18 Q. Did -- did you ever report or publish any
 19 pricing information to the FDA?
 20 A. To the FDA? No.
 21 Q. Okay. Other than your publication of
 22 pricing information to the compendia such as
 23 FirstDataBank and Red Book, did you ever publish any
 24 pricing information to any government?

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MS. FUMERTON: Objection, form.

25
0019

1 A. I was responsible for sending out what were
2 called fax -- fax blasts that had our listing WAC on
3 them, and some of them were to Medicaid agencies.

4 Q. (BY MR. ANDERSON): The -- the Medicaid
5 programs were part of the list of recipients of fax
6 blasts?

7 A. I don't specifically know what programs
8 were part of that list. I don't recall.

9 Q. I know. I -- I appreciate that. But
10 you're saying you knew some Medicaid programs, if not
11 all, were on the list?

12 A. There was a list that was called "Medicaid
13 Administrator" to the Medicaid administrator --

14 Q. Uh-huh.

15 A. -- is what the list was entitled. What
16 was on that list, I don't know.

17 Q. And, accordingly -- and I think I've seen
18 son of these letters -- there were actually letters
19 that were styled "Dear Medicaid Administrator,"
20 correct?

21 A. That is correct.

22 Q. Okay. And th- -- you understood there was
23 a list of Medicaid programs that were reflected in
24 the "Medicaid Administrator" list?

25 A. There was --

0020

MS. FUMERTON: Objection, form.

1 A. There was a list of peoples' names and
2 their faxes. What they were, I don't know, or what
3 companies they were with, their programs, I have no
4 idea.

5 Q. (BY MR. ANDERSON): You -- you understood
6 they were with Medicaid, but you don't know which
7 ones?

MS. FUMERTON: Objection, form.

8 A. I -- I believe they were going to
9 administrat- -- Medicaid administrators.

10 Q. (BY MR. ANDERSON): Okay. In addition to
11 sending out the fax blasts when you would launch a
12 product, is it true you would also send out fax
13 blasts when you would have price changes?

14 A. That is correct.

15 Q. And what prices were included in the price
16 change fax blasts?

17 A. It was prices and WAC prices.

18 Q. Did those price change notifications go to
19 Medicaid administrators as well?

20 A. Yes.

21 Q. Did they go to the pricing compendia?

22 A. Yes.

23 Q. Did they go to customers such as

0021

1 wholesalers and pharmacies?

2 A. Yes.

3 Q. What other sectors of the industry or
4 groups received the fax blast?

MS. FUMERTON: Objection, form.

5 A. The ones you named are actually the only
6 ones that I recall.

7 Q. (BY MR. ANDERSON): Who was the custodian
8 of the -- the lists of fax blast recipients?

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10 A. Excuse me. There was a company called
 11 Xpedite that maintained those lists.
 12 Q. Did anyone at -- at Abbott have a copy of
 13 the list?
 14 A. Not that I'm aware of. I don't know.
 15 Q. Did you see the list?
 16 A. I could have visibility to it if I wanted
 17 to.
 18 Q. Oh, by acce- -- accessing the Xpedite
 19 systems?
 20 A. Correct.
 21 Q. Is Xpedite a contractor of Abbott's?
 22 A. Today or then?
 23 Q. Then.
 24 A. We did contract with them to do this, yes.
 25 Q. But you don't now, I take it?
 0022
 1 A. I have no idea.
 2 Q. Oh, I see. Do you know where the company
 3 known as Xpedite is located?
 4 A. I don't know.
 5 Q. Is it true that when fax blasts of Abbott
 6 pricing information were made by Xpedite either with
 7 new product launch pricing or price change pricing,
 8 that that was done at Abbott's direction?
 9 A. That is correct.
 10 Q. Are you aware of any instances where
 11 Xpedite was publishing or reporting prices through
 12 fax blasts without Abbott's authority?
 13 A. I'm not aware of any, no.
 14 Q. Okay. Did you receive any training
 15 materials that were written or electronic regarding
 16 reporting prices by Abbott to compendias such as
 17 FirstDataBank and Red Book?
 18 A. Not that I recall, no.
 19 Q. It was all just verbal between you and
 20 Tina?
 21 A. Correct.
 22 Q. Other than the fax blasts, were there other
 23 standard ways in which Abbott conveyed pricing
 24 information to compendia, and customers, and Medicaid
 25 programs such as mass mailings?
 0023
 1 MS. FUMERTON: Objection, form.
 2 A. An e-mail -- we would send an e-mail out.
 3 Q. (BY MR. ANDERSON): Would that be done by a
 4 PPD, or would that be done by a contractor?
 5 A. That would be done by me.
 6 Q. By you?
 7 A. Uh-huh.
 8 Q. So you had a -- I take it a -- a really
 9 large address book?
 10 A. The -- I sent it to the pricing compendia,
 11 and then internal -- I -- I did not send it --
 12 everybody that was fax-blast was not sent via e-mail.
 13 Q. Okay.
 14 A. It was sent to the pricing compendia via
 15 e-mail, and then internal departments in Abbott that
 16 needed to know, like Customer Service, what PPD was
 17 doing as far as changing list or WAC pricing or
 18 launching new product.
 19 Q. I see. Did you understand that, in turn,
 20 Customer Service individuals at Abbott would be

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21 notifying customers of price changes via e-mail?

22 A. I -- I have no idea.

23 Q. You don't know?

24 A. I don't know.

25 Q. Were you notifying customers of price

0024 1 changes via e-mail?

2 A. No.

3 Q. Okay. You -- but you were notifying price
4 compendia like FirstDataBank and Red Book of price
5 changes taken by Abbott via e-mail?

6 A. Sometimes.

7 Q. What were the circumstances where you would
8 notify the compendia via fax blast versus e-mail?

9 A. I -- I don't recall.

10 Q. How did you know whether to use e-mail or
11 fax blast?

12 A. New product launches, we would always do
13 e-mail. As far as price increases, I don't recall if
14 there was one standard reason to do e-mail versus fax
15 blast or if they had a question. But working via
16 e-mail with them was something that was done
17 periodically.

18 Q. Okay. So price change notifications
19 sometimes occurred via fax blast and sometimes
20 occurred via e-mail, and you're not exactly sure why
21 one method was chosen or the other?

22 MS. FUMERTON: Objection,
23 misrepresents the testimony.

24 A. They always were done via fax blast.
25 Sometimes I believe there were questions or

0025 1 correspondence about they didn't get the e- -- they
2 didn't get the fax blasts or had questions.

3 Q. (BY MR. ANDERSON): Okay. Good. Thank you
4 for that clarification, and -- and I'm going to
5 double back just so we can clear this up.

6 Am I correct in understanding that the
7 price change notifications were always sent via fax
8 blast to the customers we listed and the Medicaid
9 programs and the compendia, but there were also
10 situations sometimes when, in addition to the fax
11 blast, the price change notification would be sent by
12 you to the compendia like FirstDataBank and Red Book
13 via e-mail?

14 MS. FUMERTON: Ob- --

15 A. That is correct.

16 MS. FUMERTON: Ob- -- just give me a
17 second to -- objection --

18 THE WITNESS: Okay.

19 MS. FUMERTON: -- misrepresents prior
20 testimony.

21 MR. ANDERSON: Thank you. Well, she
22 said "that's correct". I don't know how it can be
23 representing --

24 MS. FUMERTON: Well, you were
25 referring to Medicaid programs, and actually she

0026 1 didn't previously say that she --

2 MR. ANDERSON: Medicaid
3 administrators. Sorry.

4 Q. (BY MR. ANDERSON): When you were working
5 on the chargebacks and supervising the chargeback

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process, where did you input the pricing that was utilized in the chargebacks?

MS. FUMERTON: Objection, lack of foundation.

A. Pricing -- what kind of pricing?

Q. (BY MR. ANDERSON): Well, that's -- I'll back up and just ask a broader question.

When you were supervising the chargebacks, were you involved at all in the inputting of pricing information into Abbott computer systems?

A. Yes, I was.

Q. Okay. What prices did you input?

A. I input list, WAC, PHS, FFS pricing and deal pricing.

Q. Which system or systems maintained by Abbott did you input these prices into?

A. AES.

Q. Only the AES computer system?

A. I believe so.

Q. And it was your understanding that that system, in turn, processed the chargebacks?

A. No, it did not.

Q. Okay. Which system processed the chargebacks?

A. CPCC.

Q. And was CPCC interfacing with AES?

A. Yes.

Q. Okay. You mentioned that you input the WAC prices. What is your understanding of what the WAC prices represented?

A. Wholesale acquisition cost.

Q. Other than those plain words, what does "wholesale acquisition cost" mean, if anything?

A. It represents a cost charged to wholesalers and any other customers who purchase a case quantity of more -- or more of our products.

Q. Okay. Have -- have you known wholesale acquisition costs to be known as the wholesale invoice price?

A. No.

Q. Do you consider wholesale acquisition cost to be the wholesale invoice price?

A. No.

Q. What is the deal price?

A. A deal price can be numerous things. It's a price that is offered regarding a special promotion Abbott may be doing on products or product launches relating to either a discounted price or special terms if customers meet certain requirements and qualifications.

Q. What fields in AES did you input WAC prices into?

A. That- -- that's always a WAC field. I mean, it was called, like -- I don't recall the actual number of the field. They had alphanumeric numbers. I don't recall the specific WAC one, but there was a location for WAC price.

Q. And was there a different location for deal?

A. Correct.

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Q. And that was an alphanumeric field identifier as well?

A. No. It was a separate part of AES called AES deals.

Q. Okay. And do you understand how -- strike that. I'll back up.

Were you familiar with how chargebacks were processed for the erythromycin products?

A. I'm familiar with how chargebacks are

processed in general.

Q. Do -- do you recall prior to July of 2003, which would have been in the early part of your tenure as Supervisor of Chargebacks, ha- -- having any dealings with how chargebacks were processed for the erythromycin products?

A. I -- I don't recall.

Q. Do you remember anything that was unique about how process -- pardon me, pricing was selected for purposes of processing chargebacks on the erythromycin products prior to July of 2003?

A. I don't know.

Q. We'll -- we'll get into that a little later. What was your understanding of what list price represented?

A. List price represents a price that customers pay, other than wholesalers, if they purchase less than a case quantity.

Q. Is it not possible for wholesalers to pay list price?

A. I'm not completely sure.

Q. Did you ever have any awareness that wholesaler- -- wholesalers could purchase at list price?

(Sneezing.)

THE WITNESS: Bless you.

A. I don't know.

Q. (BY MR. ANDERSON): In AES, was there a field for AWP?

A. No, there's not.

Q. In any Abbott computer system was there a field for AWP?

MS. FUMERTON: Objection, form.

A. When you say "computer system," does that also include databases?

Q. (BY MR. ANDERSON): Yes.

A. Yes, there is.

Q. Okay. Which data- -- database?

A. In our Many Medicaid system, I'm aware of a field there.

Q. And you- -- you've actually been involved with that system, correct?

A. Correct.

Q. And you've been involved in the loading of AWP information into the Many system, correct?

A. Not personally. My staff.

Q. Oh, I'm sorry.

A. Yeah.

Q. How many people report to you?

A. Directly, three. Indirectly, six.

Q. I see. And so people reporting to you are

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responsible for loading AWP's into the many computer system maintained by Abbott?

A. Correct.

Q. And they're obtaining those prices from FirstDataBank, correct?

A. It's a -- it's called Analy\$ource. I'm not sure if it is or isn't owned by FirstDataBank.

Q. Do you understand Analy\$ource is a source of FirstDataBank pricing information?

A. I'm not a hundred percent sure of that. I -- I have, I think, that general understanding, but I don't have firsthand knowledge of that.

Q. Okay.

(Exhibit 1 marked.)

Q. (BY MR. ANDERSON): Ms. Gerzel, if you could, take a look at what's been marked as Gerzel Exhibit 1.

A. (Reviews document.)

Q. Is Gerzel Exhibit 1 an example of price change notifications that you sent out to the pricing services via e-mail?

A. Yes, it is.

Q. And this would have not only -- this particular one went to FirstDataBank, correct?

A. Yes, it did.

Q. And I also see a -- an e-mail address there next to the FirstDataBank address of man- -- mfgdata@drugfacts.com. What's that?

A. I don't recall. I don't know.

Q. Would -- would this type of e-mail also have been sent to Red Book and Medi-Span?

A. It -- it could have been. I don't recall.

MR. ANDERSON: Hello?

MR. WINGET-HERNANDEZ: Hey, Jarrett, it's me.

MR. ANDERSON: Okay. Michael, why don't you go ahead and -- and make your appearance. We got started a little early?

MR. WINGET-HERNANDEZ: Oh, okay.

MR. ANDERSON: Okay?

MR. WINGET-HERNANDEZ: Sure. Are we on the record?

MR. ANDERSON: Yes.

MR. WINGET-HERNANDEZ: This is Michael Winget-Hernandez. I'm here today on behalf of the States of Wisconsin, Illinois, Kentucky, South Carolina, Idaho, Alaska, and Hawaii.

MR. ANDERSON: Okay.

MR. WINGET-HERNANDEZ: And I apologize for the interruption.

MR. ANDERSON: Oh, no problem.

Q. (BY MR. ANDERSON): Okay. Ms. Gerzel, you were saying that -- that they -- these types of e-mail notifications also could have been sent to Red Book and Medi-Span, correct?

A. Correct.

MS. FUMERTON: Objection, form.

Q. (BY MR. ANDERSON): Would -- would -- would that have been sent in a separate e-mail and, therefore, that's why those addresses aren't shown here, or is that Drug Facts address somehow related

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to Red Book and Medi-Span?

A. I don't know where Drug -- who or what Drug Facts is related to, and I don't know if this particular e-mail was also sent anywhere else.

Q. Where would you have been able to obtain the address that's listed there next to FirstDataBank?

A. There -- we had a list of addresses of data vendors or pricing compendia that we had dealt with that had requested that we send them information regarding our products.

Q. You -- you mentioned earlier that the price change notifications were always sent out via a fax

blast, right?

A. Correct.

Q. Okay. Is it likely that FirstDataBank and Drug Facts had let y'all know that they hadn't received the fax blast and, therefore, you followed up with an e-mail?

A. I don't know.

Q. Is that typically how it would play out?

A. I -- I real -- I don't know. I don't -- I don't recall.

Q. You don't recall this particular instance, I understand that. I'm not focussing on this particular instance anymore. I'm asking more generally.

How would it normally occur that you would follow up with an e-mail price change notice to the compendia after you had sent out a fax blast price change notice to the compendia?

A. The only -- the only thing I have any recollection of is if there were ever issues with the fax blast, I would get phone calls saying -- because my phone number was on the bottom of all of these -- saying that I understand a pricing letter or communication went out, I did not receive it, can you please fax it, or something or -- like that.

Specifically when or how often, I have -- I don't know.

Q. Who would typically place those phone calls to you?

A. Who- --

MS. FUMERTON: Objection, form.

A. Whoever had a question or a comment.

Q. (BY MR. ANDERSON): I -- I'm -- that was a poor question on my part. It was too broad.

What types of entities would typically call you? Would it be pricing compendia personnel, or would it be customers such as pharmacies?

A. It could have been either that were on the list of fax blasts.

Q. Did you, in fact, get phone calls from both of those types of groups?

A. Over time, yes.

Q. Okay. How would they have -- how would have -- how would -- without them receiving the fax blast or with them having some type of problem with the receipt of the fax blast, how they would have even known that there was a price change?

MS. FUMERTON: Objection, form. Lack

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of foundation.

A. I don't know.

Q. (BY MR. ANDERSON): But for whatever reason, they would get wind of some information and they would call you and ask for a price change e-mail, correct?

A. Correct.

Q. Okay. And then you would send that out, and Exhi - -- and Exhibit 1 is an example of that?

A. Correct.

Q. Looking at the next page of Exhibit 1, there's a -- a form letter there dated -- pardon me -- there's a form letter on the second page of Gerzel Exhibit 1 that's titled "Dear Abbott, slash, Ross Data Vendor," correct?

A. Correct.

Q. These were form letters that would be created by Abbott either at launch or upon a price change and sent to the compendia, correct?

A. That's correct.

Q. Were there similar form letters that -- with slightly different language at the top that were sent to customers that said, for instance, "Dear Wholesaler"?

A. That's correct.

Q. And then if it was to a pharmacy, it would say "Dear Pharmacy"?

A. I don't know if it actually said "Dear Pharmacy," but it would say -- there were perhaps four or five different salutations.

Q. I -- thank you. You said that much better than my question. Including one salutation that was "Dear Medicaid Administrator"?

A. Correct.

Q. Okay. Did Abbott maintain copies of each of those form letters with the different salutations?

A. I did during the time I was there, yes.

Q. You had some templates on your computer?

A. Correct.

Q. Why was it that Abbott was sending out launch pricing and price change notifications after launch to pricing compendia?

MS. FUMERTON: Objection, form.

A. It was my understanding through my training that that was what was required for us to be -- to send them.

Q. (BY MR. ANDERSON): You were told to do it?

A. Correct.

Q. Right. But other than the fact that you had been told that this was now something you should do, did you understand why Abbott was choosing to do that?

A. No.

MS. FUMERTON: Objection, form.

A. No.

Q. (BY MR. ANDERSON): Did you ever ask?

A. Not that I recall, no.

Q. Did you have any understanding about how the pricing compendia were -- well, strike that.

Did you have any understanding that

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the pricing compendia were, in turn, publishing these prices that you were sending them?

A. Yes, I did.

Q. Okay. And did you understand why Abbott would want those prices published?

MS. FUMERTON: Objection, form.

A. No -- no, I don't -- I don't recall specifically why.

Q. (BY MR. ANDERSON): Do you think it had to do with drug reimbursement, like when you had handled reimbursement claims in Home Infusion?

MS. FUMERTON: Objection, form.

A. I -- I don't know.

Q. (BY MR. ANDERSON): Did you know when you were in Home Infusion that reimburs- -- -- drug reimbursements were paid off of published prices?

MS. FUMERTON: Objection, form.

0039

A. I have no idea.

Q. (BY MR. ANDERSON): You don't?

A. No. I don't recall much back then.

Q. Did you know that --

MR. WINGET-HERNANDEZ: Excuse me --

MR. ANDERSON: Mist- -- hello?

MR. WINGET-HERNANDEZ: Is it feeding

back?

MR. ANDERSON: Yes.

MR. WINGET-HERNANDEZ: You know, we had this problem -- can we go off the record?

THE VIDEOGRAPHER: Yes? We are off the record at 9:10 a.m.

(Off the record.)

THE VIDEOGRAPHER: We are back on the record at 9:13 a.m.

Q. (BY MR. ANDERSON): Ms. Gerzel, did -- was there a set of files that were maintained at Abbott PPD regarding price reporting to the compendia?

A. Yes, there is.

Q. When you took over the responsibilities in 2003, did Tina Calvert physically pass those along to you, or do they reside in a given location?

A. They're on our computer share drive.

Q. They're all electronic?

0040

A. I don't know if they're all electronic or not.

Q. Did -- are you aware of any paper files maintained by Abbott regarding its communications with pricing compendia like FirstDataBank and Red Book?

A. Ever?

Q. Yes, ma'am.

A. Yes, I am.

Q. Okay. And where were those maintained?

A. In our Corporate Records area.

Q. And do they still exist to your knowledge?

A. I -- I have no idea.

Q. When -- when you were responsible for communicating with the pricing compendia from 2003 to 2005, were you aware that those written records existed?

A. Yes.

Q. Do you have any reason to believe those

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written records have been destroyed or lost?

A. No.

Q. When you say "Corporate Records," what are you referring to?

A. It's a location where we do all of our archiving. It's called "Corporate Records".

Q. Okay. Were there any records -- more current records kept on site?

A. I -- I believe so. I believe we kept a hard copy with the actual paperwork that we did in the system to get to these prices.

Q. And those were kept in a file cabinet at PPD?

A. For a period of time, until we needed to archive them to Corporate Records due to space.

Q. How long was the -- strike that.

For what period of time would the records be kept at PPD's location and then sent to Corporate Records or archives?

A. I don't know. There was not a standard length of time before we would send them. It was more due to space.

Q. How -- once records were sent to archives, how long -- also known as Corporate Records, how long were they kept there?

A. I -- I don't know the record retention.

Q. Would -- would a document such as Gerzel Exhibit 1 have been kept in electronic form or paper form or both?

A. Probably both.

Q. At Abbott?

A. Correct.

Q. In your form letter to the data vendors noted in the second page of Gerzel Exhibit 1, at the first full paragraph under the pricing, you have a sentence that reads, "Third Party Program administrators have been notified of these changes." Do you see that?

A. Yes.

Q. Do you know why that sentence was included in these letters?

A. No, I don't.

Q. Were -- did you ever have any involvement at all in drafting these letters?

A. No, I didn't. I --

Q. Who would --

A. In -- in drafting the template, I -- I changed, like, the tab section, the dates and the products.

Q. Okay. Thank you. You would change the salutation, and you would change the pricing information, correct?

A. Pricing and/or product depending on --

Q. Right.

A. Yes.

Q. But the actual language, such as the

paragraph that I was just focussing on, who was responsible for drafting that?

A. I don't know.

Q. Did that language ever change during the

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two-plus years that you were responsible for communicating these letters to the compendia?

A. Not that I recall.

Q. Do you think the reference to "third party program administrators" has anything to do with drug reimbursement?

A. I -- I have no idea.

Q. Do you have any reason to believe that that reference doesn't pertain to drug reimbursement?

MS. FUMERTON: Objection, form.

A. I -- I don't know what it pertains to.

Q. (BY MR. ANDERSON): What are third party program administrators?

MS. FUMERTON: Objection, form.

A. I don't know.

Q. (BY MR. ANDERSON): Have you heard private insurance and Medicaid referred to as third party programs?

A. I have heard "third party" before, but I'm not -- I don't recall in what reference.

Q. Can you recall anything about the context

of the reference to "third party"?

A. No.

Q. Can you think of any references to third party programs other than third party drug reimbursers like private insurance and Medicaid?

A. The only thing I recall ever hearing is third party payors, and --

Q. Right.

A. -- I don't know in reference to what or who.

Q. I've -- I've heard them referred to as third party payors as well.

Have you heard third party payor to refer to entities that reimburse pharmacies for drugs, like Medicaid programs and private insurance?

A. I -- I don't know what they refer to or -- or anything.

Q. Can you remember anything about the context of where you've heard the phrase "third party payor"?

A. No.

Q. Do you have any idea what the third parties would be paying for?

A. No.

Q. Do you have any idea at all why Abbott was reporting prices to the compendia?

MS. FUMERTON: Objection, asked and answered.

A. I believe that's what our obligation was that they wanted us to report to them.

Q. (BY MR. ANDERSON): How did you gain that understanding?

A. Through my training, when I came to the position.

Q. What was the obligation?

A. To inform the pricing compendia of new product launches, price changes to list or WAC, or any discontinued products that we were no longer going to manufacture and sell.

Q. What was the authority that the pricing compendia had to require Abbott to report prices?

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16 MS. FUMERTON: Objection, form.
 17 A. I don't know.
 18 Q. (BY MR. ANDERSON): Did you believe that
 19 Abbott literally had to report the prices?
 20 MS. FUMERTON: Objection, form.
 21 A. That was what I was known to do with -- and
 22 trained to, "When these instances happened, here's
 23 our process".
 24 Q. (BY MR. ANDERSON): Well, I understand that
 25 you were told to do it by Abbott people. I'm asking

0046

1 a different question.
 2 Did you understand from your training
 3 at Abbott that Abbott literally had to report these
 4 prices to the compendia like FirstDataBank and
 5 Red Book.

6 MS. FUMERTON: Objection, form.
 7 A. I don't know that I was ever told that by
 8 law we had to. I don't know.
 9 Q. (BY MR. ANDERSON): You -- but all you do
 10 know is that Abbott was instructing you to report the
 11 prices?

12 A. Correct.
 13 Q. Okay. If you could, take a look at
 14 what's -- I'm going to mark as -- well, I'll tell you
 15 what. It's already been marked, so we'll just use
 16 that. It's Fiske Exhibit 9.

17 A. (Reviews document.)
 18 MS. FUMERTON: I think mine are out of
 19 order. Can I just see what it looks like?
 20 MR. ANDERSON: Here, I've got an extra
 21 copy (indicating).

22 MS. FUMERTON: Oh, thanks.
 23 MR. ANDERSON: Save me some weight on
 24 the way home.

25 A. (Reviews document.)

0047

1 Q. (BY MR. ANDERSON): Have you seen documents
 2 similar to Fiske Exhibit 9 before?

3 A. Yes, I have.

4 Q. In what context?

5 A. In a request to pull information as part of
 6 a legal request from our archiving.

7 Q. So you found records similar to Exhibit 9
 8 in Abbott's records?

9 A. Correct.

10 Q. Looking at the second page of Exhibit 9, do
 11 you recognize that as a standard form letter that
 12 would have been sent by Abbott to the data services?

13 A. I -- I don't know.

14 Q. Because it predates 2003?

15 A. Correct.

16 Q. In looking at the last two pages of
 17 Exhibit 9, do you recognize those pages as a price
 18 change notification?

19 A. Not any that I'm familiar with, no.

20 Q. In what way is this price change
 21 notification different than the ones that you were
 22 familiar with?

23 A. They look -- I mean, they look and feel
 24 different. They -- this -- these aren't the -- this
 25 isn't the same template -- template that I used the

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time period that I was there.

Q. Did your templates include AWP information?

A. No.

Q. Do you agree that this price change notification includes AWP information?

A. This sheet includes AWP, yes.

Q. Are you familiar with a gentleman named Darrell Ballard?

A. I've heard his name. I do not know him.

Q. Did Darrell Ballard used to work in Abbott PPD Pricing?

A. That's my understanding.

Q. Do you understand that Darrell Ballard also previously was responsible for reporting pricing information by Abbott to Pricing Services?

A. I'm not sure what he did.

Q. Do you have any general understanding of what he did?

A. No.

Q. You just know he used to work at PPD?

A. Correct.

Q. Looking at the first page of Exhibit 9, does that appear to be a fax cover that would have been utilized by Abbott's contractor who sent the fax blasts?

A. I don't know.

Q. Is it different than the fax covers that you are familiar with?

A. I have never -- to my -- I don't recall ever seeing a fax cover from Xpedite.

Q. I see. Have -- do -- to your knowledge, did Abbott use contractors other than Xpedite over the years to send the fax blasts?

A. Not that I'm aware of.

Q. Are you aware of the time period for which Xpedite had been handling -- strike that. I'll rephrase it.

How many years prior to your involvement do you understand Xpedite had been handling the fax blast for Abbott?

A. I have no idea how long prior.

Q. Did you ever gain an understanding that Xpedite had been handling it for two years, five years?

A. I -- I -- I know that they were handling it when I came on board, but I don't know how long prior to that.

Q. Did you ever receive any price verification requests or price reports --

MR. ANDERSON: Are you okay?

THE WITNESS: Yeah, I just spilled, sorry.

MR. ANDERSON: Oh.

MS. FUMERTON: Are you --

THE WITNESS: I'm good. I was picking it up.

MR. ANDERSON: Oh, okay.

Q. (BY MR. ANDERSON): I'll rephrase. Have you ever received any price verification requests or reports of pricing information from pricing compendia like Red Book and FirstDataBank?

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12 A. Yes, I have.
 13 Q. Okay. Have you received those reports from
 14 both Red Book and FirstDataBank?
 15 A. I don't recall which one they were -- I
 16 don't recall.
 17 Q. And did you receive instructions about how
 18 to review and complete those reports?
 19 MS. FUMERTON: Objection, form.
 20 A. I -- I don't recall what was sent with them
 21 or what instructions were sent.
 22 Q. (BY MR. ANDERSON): Did you ever receive
 23 any instruction or information at all from Abbott
 24 personnel about how to complete those reports?
 25 A. I don't re- -- I don't recall.

0051

1 Q. When Tina Calvert trained you, so to speak,
 2 did she mention that you would be receiving reports
 3 seeking verification of pricing from Red Book and
 4 FirstDataBank?
 5 A. Not -- not that I recall.
 6 Q. Were copies of price verification reports
 7 or requests from FirstDataBank and Red Book kept in
 8 Abbott's files?
 9 MS. FUMERTON: Objection, form.
 10 A. I -- I don't recall if they were or
 11 weren't.
 12 Q. (BY MR. ANDERSON): Do you have any memory
 13 that they were not kept?
 14 A. I just don't remember one way or the
 15 other.
 16 Q. Are you aware of any reasons why the
 17 verification reports may have been discarded?
 18 MS. FUMERTON: Objection, form.
 19 A. No.
 20 (Exhibit 2 marked.)
 21 Q. (BY MR. ANDERSON): Take a look, if you
 22 could, at what's been marked as Gerzel Exhibit 2.
 23 A. (Reviews document.)
 24 Q. Have you seen this type of document before?
 25 A. I -- I -- I don't recall one way or the

0052

1 other.
 2 Q. Do the instructions shown in the lower
 3 middle portion of the page look familiar to you?
 4 A. No.
 5 Q. Does this appear to be -- strike that.
 6 Did -- when you would receive the
 7 Red Book reports, do you recall there being
 8 instructions about how to complete the reports?
 9 A. No, I don't recall.
 10 Q. Do you agree that this particular page,
 11 Gerzel Exhibit 2, appears to pertain to instructions
 12 about how to complete the Red Book reports?
 13 MS. FUMERTON: Objection, form. Lack
 14 of foundation.
 15 A. They appear to be instructions. To what, I
 16 don't know.
 17 Q. (BY MR. ANDERSON): And the first
 18 instruction reads, "Please make all changes directly
 19 on the forms. Mark through the old price (AWP, DIRP,
 20 WAC, SRP) and note the new price in the same box."
 21 Did I read that correctly?
 22 A. Yes.

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Q. Did you follow those types of instructions when you would complete the reports?

MS. FUMERTON: Objection, form. Lack

of foundation.

A. I recall making changes to list and WAC price in a similar fashion, yes.

Q. (BY MR. ANDERSON): Do you recall making any changes to AWP?

A. No.

Q. Do you know of any reason why you wouldn't make changes to AWP?

A. Because Abbott -- we have nothing to do with AWP.

Q. What do you mean?

A. I mean, we report pricing on list and WAC. We don't publish or report pricing on AWP.

Q. Accordingly, why didn't you mark through the AWP's?

A. Because I wouldn't know what was correct and what was incorrect with an AWP price.

Q. Are you familiar with the fact that Abbott reported AWP's to the compendia prior to 2003?

MS. FUMERTON: Objection, form.

A. I was familiar with documents that showed AWP on -- with list and WAC on price change notifications.

Q. (BY MR. ANDERSON): How did Abbott calculate those AWP's?

MS. FUMERTON: Objection, form.

A. I --

MS. FUMERTON: Lack of foundation.

A. I don't know where those AWP's came from.

Q. (BY MR. ANDERSON): You just know they were sent?

MS. FUMERTON: Objection, form.

A. I know they were on the form.

Q. (BY MR. ANDERSON): Did you ever ask anybody at the pricing compendia what -- how the AWP was calculated?

A. No.

Q. Did you ever notice that the AWP's changed when the WAC prices changed?

MS. FUMERTON: Objection, form.

A. I never looked at AWP pricing.

Q. (BY MR. ANDERSON): Did you ever compare the AWP's that were in the verification reports sent by FirstDataBank and Red Book to the AWP's that Abbott had?

MS. FUMERTON: Objection --

A. No.

MS. FUMERTON: -- form.

Q. (BY MR. ANDERSON): Did you ever check the AWP's on the verification reports with the AWP's in

Abbott's many system?

A. No, I have not.

Q. Let's take a look at one of the verification reports. It's Exhibit 10 -- Fiske Exhibit 10.

MS. FUMERTON: I don't know what I did. Somehow I got these out of order.

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MR. ANDERSON: That's okay. I've got an extra copy of this one too.

MS. FUMERTON: You know what? I've got it, I think.

MR. ANDERSON: Well --
MS. FUMERTON: You can keep that one. You're just trying to get rid of paper.

MR. ANDERSON: Just a nice guy.
Q. (BY MR. ANDERSON): Have you seen Fiske Exhibit 10 before?

A. Can I look at it for a second?

Q. Sure.

A. (Reviews document.) I believe I have.

Q. Have you seen it recently?

A. I believe so.

Q. Did you see Fiske Exhibit 10 in preparing to testify?

A. Yes.

Q. Did you discuss Fiske Exhibit 10 with your lawyers?

MS. FUMERTON: I just want to caution the witness that this will be a "yes" or "no" answer.

Q. (BY MR. ANDERSON): Yeah. That's a "yes" or "no" answer.

A. Yes.

Q. In looking at Fiske Exhibit 10, you'll agree, won't you, that you signed the second page?

A. Yes, I did.

Q. And did you seek any input from any Abbott personnel about how to complete pricing verification reports such as Fiske Exhibit 10?

A. I don't recall.

Q. I notice that the -- that Fiske Exhibit 10 has your contact information typed in. Would that have been information that you or someone at Abbott typed in, or would that be information that Red Book had provided?

A. I believe Red Book.

Q. Right. And like at the top, for instance, you made a correction to the company name, correct?

A. Correct.

Q. How did Red Book have your contact information? Had you provided that previously?

A. I -- I don't know.

Q. Most likely had you provided that previously?

A. I would imagine so.

Q. And then at -- looking at the third page of Fiske Exhibit 10 are those same instructions that we looked at in Gerzel Exhibit 2, correct?

A. Correct.

Q. Does that refresh your memory that you had received instructions about how to complete these forms?

A. No.

Q. Not at all?

A. Not at all.

Q. Do you think you would have looked at the instructions?

A. I would think, yes.

Q. Then looking at the actual report itself,

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particularly the section that ends with Bates number 01343, it's page 6 of 16, there's several erythromycin products that start there and continue into the next couple of pages. Do you see those?

A. Yes, I do.

Q. You didn't make any changes to any of the published AWP's there, did you?

A. No.

Q. And you didn't make any changes to any of the other published pricing, correct?

A. Correct.

Q. So as far as you were concerned, is it true that all those prices were correct?

MS. FUMERTON: Objection, form.

A. The prices that I reviewed on the sheet were listing WAC prices.

Q. (BY MR. ANDERSON): You ignored the AWP's?

A. Correct.

Q. Did you ask anybody what you should do about the AWP's that were on the forms?

A. Not that I recall.

Q. Why not?

A. I don't recall one way or the other if I asked anybody.

Q. Given that this report is called "Product Listing Verification" and you're signing down at the bottom of each page "OK with changes," do you feel like you should have asked somebody what to do about the AWP?

MS. FUMERTON: Objection, form. Lack of foundation.

A. I -- I'm not sure if I asked anybody or

not. If I didn't, I don't -- I don't know if it would have been the right thing to do or not.

Q. (BY MR. ANDERSON): You agree, don't you, that you signed off on these erythromycin prices at the bottom of each page?

A. I agree I -- yeah, I signed the bottom of each page.

Q. And you marked, for instance, "OK with changes," and there's some changes shown for the Enduronyl products, and then you -- the next page, which is all erythromycins, you marked "OK as is," correct?

A. Correct.

Q. Do you feel like you were verifying the WAC's?

A. WAC and list price.

Q. Did you feel like you were verifying the AWP's?

A. No.

Q. Why not?

A. A- -- Abbott does not report AWP. I would not know one way or -- the difference about AWP.

Q. Did you note anywhere that you were only verifying WAC, not AWP?

A. (Reviews document.) I don't appear to have

written a comment to that effect.

Q. I'm sorry. I -- I didn't hear you very well.

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A. Oh, I said I didn't -- I don't appear to have written a comment to that effect.

Q. Oh.

A. I was just looking to see if I had written a comment at that --

Q. Yeah. How would Red Book or FirstDataBank have known that you were not verifying the AWP's?

MS. FUMERTON: Objection, form.

A. I don't know.

Q. (BY MR. ANDERSON): Did you or anyone to your knowledge on behalf of Abbott ever notify Red Book that Abbott was refusing to verify the AWP's?

MS. FUMERTON: Objection, form.

A. I -- I don't know.

Q. (BY MR. ANDERSON): Did you or anyone to your knowledge at Abbott ever tell FirstDataBank that Abbott was refusing to verify the AWP's?

MS. FUMERTON: Objection, form.

A. I -- I don't know.

MS. FUMERTON: Jarrett, we want to take a break sometime soon, so whenever is a good time for you.

MR. ANDERSON: Okay. Let's take a short, like, maybe five or ten minute tops --

MS. FUMERTON: Okay.

MR. ANDERSON: -- now.

THE VIDEOGRAPHER: We are off the record at 9:40 a.m. This is the end of tape 1.

(Recess taken.)

THE VIDEOGRAPHER: We are back on the record at 10:00 o'clock a.m. This is the beginning of tape 2.

Q. (BY MR. ANDERSON): Ms. Gerzel, you, I believe, testified a few moments ago that you were not verifying the AWP's on the verification forms; is that right?

A. Yes.

Q. Were you told not to verify the AWP's?

A. Not that I recall.

Q. Did you and Ms. Calvert at all discuss the verification of the AWP's in your training?

A. Not that I recall.

Q. And I think I've asked you this question, but I want to make absolutely sure. You didn't discuss with anybody at Abbott whether or not you should be verifying the AWP's or how you should be completing the verification reports with respect to

AWP; is that true?

A. I -- I don't recall any questions.

Q. Or discussions?

A. Or discussions, right.

Q. Okay.

(Exhibit 3 marked.)

Q. (BY MR. ANDERSON): Take a look at what's been marked as Gerzel Exhibit 3.

A. (Reviews document.)

Q. Do you recognize this type of price report?

A. No.

Q. It's a different format than the one you're familiar with?

A. Yes.

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Q. Look, if you could, at the -- does it appear to you, ma'am, that this is dating from December of '99?

A. (Reviews document.) Hmm. I don't see anything. Well --

Q. Look at that fax --

A. Oh.

Q. -- header or -- yeah. There's -- you could look at the "Pricing Effective" dates and see that they go up until '99, but also, for instance, look over at the fax header.

A. Oh, I see that. December of '99?

Q. Yes, ma'am.

A. Yes.

Q. Does that indicate to you that this document dates from 1999?

MS. FUMERTON: Objection, form. Lack of foundation.

A. It appears that that's when it was faxed.

Q. (BY MR. ANDERSON): Okay. Look at -- if you could, at the page that's Bates labeled 967 -- Red Book 00967.

A. (Reviews document.)

Q. Are you there?

A. Yes.

Q. Do you see at the bottom of that page it's signed by Krista A. Kleiden?

A. Yes.

Q. Is that a person who worked in PPD Pricing?

A. Yes.

Q. And is that her signature?

A. I don't know.

Q. Looking above that, do you see for an erythromycin product there are handwritten changes to pricing?

A. Yes, I see that.

Q. And an "Effective Date" change as well of -- the handwritten note shows July 2nd, 1999, correct?

A. Correct.

Q. And do you agree, ma'am, that those changes to prices not only include changes to direct price and WAC, but also a change to AWP?

A. That is correct.

Q. Is that in your view a verification or a change of an AWP?

MS. FUMERTON: Objection, lack of foundation.

A. I don't know what it -- I don't know.

Q. (BY MR. ANDERSON): Do you have any idea how somebody in PPD Pricing such as Ms. Kleiden could have known what the proper AWP pricing should be?

MS. FUMERTON: Objection, lack of foundation.

A. I'm sorry. Could you repeat the question again?

Q. (BY MR. ANDERSON): Do you have any idea how Ms. Kleiden could have known to write in an AWP of \$205.53?

MS. FUMERTON: Objection --

A. Oh.

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1 MS. FUMERTON: -- lack of foundation.
2 You haven't established that she wrote it?

3 A. No, I -- I don't know.

4 Q. (BY MR. ANDERSON): Have you ever heard,
5 Ms. Gerzel, that Abbott knew AWP's were published for
6 its products at 125 percent of WAC?

7 MS. FUMERTON: Objection, form.

8 A. That I knew or that everybody knew that --

9 Q. (BY MR. ANDERSON): Have you ever heard
10 that people at Abbott knew that Abbott's AWP's were
11 published at 125 percent of its WAC's?

12 MS. FUMERTON: Objection, form.

13 A. I -- I -- that was something that I have
14 heard before, yes.

15 Q. (BY MR. ANDERSON): Did you hear that from
16 other people within Abbott PPD and Pricing?

17 A. I actually don't know who I heard it from.

18 Q. How long ago had you been aware of the fact
19 that AWP's were being published at 125 percent of
20 Abbott's WAC's?

21 MS. FUMERTON: Objection, form.

22 A. I -- I don't recall when I first had that
23 general knowledge.

24 Q. (BY MR. ANDERSON): Was it more than four
25 or five years ago?

0066

1 A. I don't believe it was in my HPD day --
2 time.

3 Q. Sometime when you got --

4 A. Cor- --

5 Q. -- to PPD?

6 A. Correct.

7 Q. Probably pretty early in your tenure at
8 PPD, in, like, 2000 or so?

9 A. I honest- -- I don't know.

10 Q. I'll tell you, Ms. Gerzel, that I've done
11 the math, and \$164.42 which is their handwritten WAC,
12 if you multiply that by 1.25, or 125 percent, you get
13 to \$205.53 which is the handwritten AWP on this
14 page. That -- is that consistent with your
15 understanding about how Abbott was estimating AWP's?

16 MS. FUMERTON: Objection, form. Lack
17 of foundation.

18 A. I don't know that Abbott was estimating
19 AWP's.

20 Q. (BY MR. ANDERSON): Is that at least
21 consistent with your understanding that AWP's were
22 being published at 125 percent of WAC?

23 MS. FUMERTON: Objection, form.

24 A. It's my general understanding, yeah.

25 Q. (BY MR. ANDERSON): If you could, look at

0067

1 what's been marked in this case as Gerzel (sic)
2 Exhibit 4, also DeYoung Exhibit 507, and it's in
3 electronic form on my computer.

4 MS. FUMERTON: I'm sorry. I was --
5 De- -- DeYoung what?

6 MR. ANDERSON: DeYoung 507, also
7 Garvin Exhibit 4. It's the PowerPoint presentation.

8 MS. FUMERTON: Do you mind if I --

9 MR. ANDERSON: No.

10 MS. FUMERTON: I'm sure if I take a --

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11 MR. ANDERSON: Yeah, you'll --
 12 MS. FUMERTON: -- look at it, I'll --
 13 MR. ANDERSON: -- you'll recognize the
 14 first page immediately. And I'm only going to ask
 15 her about the first page too.
 16 MS. FUMERTON: Okay. But take time to
 17 look at the --
 18 MR. ANDERSON: Yeah.
 19 MS. FUMERTON: -- whole document.
 20 MR. ANDERSON: You can look at the
 21 whole thing if you want.
 22 MS. FUMERTON: So you can just scroll
 23 up and down to --
 24 THE WITNESS: Oh, okay.
 25 MS. FUMERTON: -- see it.

0068

1 THE WITNESS: Sorry.
 2 MS. FUMERTON: I'm go back up to the
 3 top and I'll pull it up to you so you can see.
 4 A. (Reviews document.) Okay.
 5 Q. (BY MR. ANDERSON): Does Garvin Exhibit 4
 6 appear to be --
 7 MS. FUMERTON: Gerzel. Is it not
 8 Gerzel?
 9 MR. ANDERSON: No, it's actually
 10 Garvin.
 11 THE WITNESS: It's --
 12 MS. FUMERTON: Oh, you're not
 13 remar- -- I am sorry. So --
 14 MR. ANDERSON: No.
 15 MS. FUMERTON: -- it's Garvin Exhibit
 16 4?
 17 MR. ANDERSON: It's Garvin Exhibit 4.
 18 It's also been marked as DeYoung 507.
 19 MS. FUMERTON: Okay.
 20 Q. (BY MR. ANDERSON): Does Garvin Exhibit 4,
 21 Ms. Gerzel, appear to be a PowerPoint presentation?
 22 A. Yes.
 23 Q. And if you could, focus on the first page
 24 which has six slides.
 25 A. Okay.

0069

1 Q. Do you agree it's dated September 2001?
 2 A. (Reviews document.) Hang on.
 3 Q. In the upper left-hand corner, the -- that
 4 slide in the upper left-hand corner?
 5 A. It -- yeah, it -- yes, September 2001.
 6 Q. And you were in the PPD Pricing Department
 7 in that time, correct?
 8 A. I started in September 2001.
 9 Q. And look, if you could, at the middle slide
 10 on the right-hand side. Do you see an org chart
 11 there?
 12 A. Uh-huh.
 13 Q. And you're actually shown as a member of
 14 the Pricing Department, correct?
 15 A. Correct.
 16 Q. Do you believe you attended a -- a meeting
 17 where this presentation was made or otherwise was
 18 provided a copy of this presentation?
 19 A. In September 2001?
 20 Q. At all.
 21 A. At all? I -- I have attended training

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22 sessions, yes.

23 Q. Have you seen that PowerPoint presentation
24 before?

25 A. It looks familiar, yes.

0070 1 Q. Okay. Looking down in the lower right-hand
2 corner at the slide that -- that's titled "Price
3 Definitions"?

4 A. Uh-huh.

5 Q. Do you see a definition of AWP?

6 A. Yes, I do.

7 Q. And that definition defines AWP as average
8 wholesale price, correct?

9 A. Correct.

10 Q. And then it notes that AWP is estimated at
11 125 percent of WAC, correct?

12 A. Correct.

13 Q. Is that consistent with your training at
14 PPD?

15 MS. FUMERTON: Objection, form.

16 A. It's consistent with my general knowledge,
17 yeah.

18 Q. (BY MR. ANDERSON): And then there's
19 actually a notation that Abbott was -- pardon me,
20 that AWP was known to be used in reimbursement,
21 correct?

22 A. As a reimbursement reference, yes.

23 Q. And were you aware of that when you were in
24 PPD?

25 A. I have become aware of that in my current
0071 roles.

1 Q. Were you aware of that back in the 2001,
2 2000 time frame when you started in PPD?

3 A. I believe it's something that's -- I've
4 gained over time in my more current roles within
5 Government.

6 Q. Is it -- is it likely that you had an
7 understanding that AWP was used for reimbursement
8 back in 2001, 2002?

9 A. Probably not.

10 Q. Do you think -- you said you've seen that
11 document before. Were you trained on that document?

12 MS. FUMERTON: Objection, form.
13 Misrepresents testimony.

14 A. I believe that I have been in training
15 classes with this document, but I don't -- that
16 doesn't mean that I have a full understanding of
17 everything that was prevent- -- presented.

18 Q. (BY MR. ANDERSON): Do you believe you were
19 at least presented the price definitions that are set
20 forth on the first page of Garvin Exhibit 4?

21 A. Yes.

22 Q. Okay. Do you -- do you think that at that
23 point at least, at some level, you were made aware
24 that AWP was used for reimbursement?

0072 1 A. I believe that it was put up there and --
2 yeah.

3 Q. Okay. And that awareness would have
4 preceded your work in reporting prices to the
5 compendia, correct?

6 A. If I had attended this training before

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7 then, yes.

8 Q. And you -- and you most likely did,
9 correct?

10 A. I don't know when I attended this
11 training.

12 Q. Do you have any reason to think that a
13 PowerPoint dated September 2001 would not have been
14 presented to you until sometime after 2003?

15 A. I -- I don't know when the training classes
16 were held. We don't have them on a
17 regularly-scheduled basis.

18 Q. Well, it wouldn't take two years to hold
19 it, would it?

20 MS. FUMERTON: Objection, form.

21 A. I -- I don't know -- I don't know when I
22 had this training.

23 Q. (BY MR. ANDERSON): All right. Is it most
24 likely, Ms. Gerzel, that when you were getting
25 pricing reports from the compendia that had AWP

0073 1 information on it, that you knew at some level that
2 AWP was used for reimbursement?

3 A. I -- I don't know. I don't recall knowing
4 that.

5 Q. Do you have any reason to think that when
6 you were getting the pricing reports from the
7 compendia that showed AWP for Abbott drugs, you did
8 not know AWP was used for reimbursement?

9 A. I really only had a general knowledge of
10 AWP then in my -- in my role. My role was to report
11 list and WAC and to make product and price changes.

12 MR. ANDERSON: Objection,
13 nonresponsive.

14 Q. (BY MR. ANDERSON): Ma'am, do you have any
15 reason to think you didn't know AWP at some level was
16 used for reimbursement prior to 2003?

17 A. I -- I had no -- I -- I don't know why I
18 would know that. It was not involved in any of my
19 roles and responsibilities.

20 Q. Well, it was included in this training
21 correct?

22 A. Correct.

23 Q. And the training is dated September 2001,
24 correct?

25 A. Correct.

0074 1 Q. And you believe you participated in the
2 training, correct?

3 MS. FUMERTON: Objection, form.

4 A. At some point in time I participated in
5 training. I started in mid-September. I don't know
6 if I participated in this training in September.

7 Q. (BY MR. ANDERSON): I know. But I'm not
8 limiting it to September. I'm saying, prior to 2003,
9 don't you think you were trained on that particular
10 Garvin Exhibit 4?

11 A. I don't know.

12 MS. FUMERTON: Objection, form.

13 Q. (BY MR. ANDERSON): Do you have any --

14 MS. FUMERTON: Asked and answered.

15 Q. (BY MR. ANDERSON): Do you have any reason
16 to think you were trained on Garvin Exhibit 4 after
17 2003?

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18 A. I just don't know when I was trained on
19 it --

20 Q. Okay.

21 A. -- or when I saw this presentation.

22 Q. Okay. So you don't have any reason to
23 think that it wasn't presented to you until after
24 2003, do you?

25 A. No.

0075

1 Q. Okay. And you'll agree with me that it's
2 most likely that that training shown in Garvin
3 Exhibit 4 on reimbursement and AWP was presented
4 prior to 2003, correct?

5 MS. FUMERTON: Objection, form.

6 A. I believe it was presented probably at some
7 point in time each year. Whether I attended it or
8 not, I have no idea. I don't recall.

9 Q. (BY MR. ANDERSON): Do you have any reason
10 to think you wouldn't have attended?

11 A. I don't --

12 MS. FUMERTON: Objection, form.

13 A. I --

14 MS. FUMERTON: Attended when?

15 A. I do not attend all of the new hire
16 trainings and all of the trainings any year.

17 Q. (BY MR. ANDERSON): Well, let's focus,
18 then, on 2001. You were a new hire in 2001, right?

19 A. September of 2001, yes.

20 Q. So it's most likely that you would have
21 been attending the training?

22 MS. FUMERTON: Objection, form.

23 A. If it was a training that was not
24 overlapping with something else that I had to do that
25 was more important, I would have attended. I don't

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1 know if I attended this training and when.

2 Q. (BY MR. ANDERSON): Let's put it this way.
3 You were a new hire in 2001, right?

4 A. Yes.

5 Q. And the training was focused on new hires,
6 correct?

7 A. Correct.

8 Q. So most likely you would have been there
9 because it was focused on people such as yourself?

10 MS. FUMERTON: Objection, form, and
11 asked and answered.

12 A. I don't -- I don't know when I attended
13 this training. I don't recall attending training in
14 2001 at all, one way or the other.

15 Q. (BY MR. ANDERSON): Right. You're just
16 saying that was over eight years ago and I don't
17 remember -- or almost eight years --

18 A. Yeah --

19 Q. -- ago?

20 A. -- correct. I --

21 Q. Okay. But I'm -- I'm not asking if you
22 specifically recall sitting in the meeting.

23 I'm saying, do you specifically recall
24 any reason why as a new hire in 2001 you would not
25 have attended the new hire training in 2001?

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1 A. I don't recall a re- -- specific reason I
2 would not, no.

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Q. Okay.

(Exhibit 4 marked.)

Q. (BY MR. ANDERSON): Ms. Gerzel, if you could, take a look at what's been marked as Exhibit 4.

A. (Reviews document.)

Q. My questions are going to be focused on the second page primarily.

MS. FUMERTON: But take a minute to just quickly review the whole document though.

A. Okay. (Reviews document.)

Q. (BY MR. ANDERSON): Do you recognize the type of document that's shown starting on page 2 of Exhibit 4?

A. No.

Q. Have you seen National Drug Data File reports before?

A. Hmm. They don't look familiar.

Q. What types of reports did you receive from FirstDataBank?

MS. FUMERTON: Objection, form. Can you specify a time period?

Q. (BY MR. ANDERSON): At any time have you ever received any reports from FirstDataBank?

A. Not that -- not that I recall.

Q. Did you ever review any FirstDataBank reports that were in the files of Abbott PPD?

A. No, not that I recall.

Q. Looking at the second page of Exhibit 4, do you see that -- toward kind of the middle right-hand side of the page there are different price columns listed?

A. Yes.

Q. And there's a price titled "WHLNET". Do you know what that stands for?

A. No.

Q. Have you ever heard of a pricing term known as "wholesale net"?

A. No.

Q. Next to that there's a price "DIR". Do you know what that means?

A. I believe direct price.

Q. And what about the next price, "AWP"? What does that stand for?

A. Average wholesale price.

Q. Do you see anywhere on this page a request for WAC prices?

A. I don't see anything that would say

"W-A-C," which is what I would expect to see for WAC.

Q. Are you aware of any price on this -- shown on this page that's synonymous with WAC?

A. No, I'm not.

Q. Did FirstDataBank ever send you a set of instructions regarding how to complete product update reports?

MS. FUMERTON: Objection, lack of foundation.

A. By "product update reports," do you mean also product launch information?

Q. (BY MR. ANDERSON): No. This would be more

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along the lines of updating prices for products that have already been launched.

A. Oh. I -- I don't recall.

Q. Did they send you materials on how to report prices at launch?

A. I -- yes.

Q. And were those kept in Abbott's files?

A. For the time period I was there, I recall saving those, yes.

Q. And how many pages were they, if --

A. It was one form.

Q. One single she- -- piece of paper?

A. Yes.

Q. And -- and what were the instructions?

A. It was just a form that said what -- that had various name, strength, etcetera, etcetera.

Q. Did it have pricing information on it or requests for pricing information?

A. I believe so. I don't specifically know what.

Q. Wh- -- you don't know which prices --

A. No.

Q. -- were requested?

A. No, I don't recall.

Q. Do you know if it requested wholesale net or "WHLNET" prices?

A. Not that I recall, no.

Q. Do you know if it requested AWP prices?

A. Not that I recall, no.

Q. Do you know if it requested WAC prices?

A. I -- I don't recall what it requested.

Q. Okay.

(Exhibit 5 marked.)

Q. (BY MR. ANDERSON): Take a look at Exhibit -- Gerzel Exhibit 5. And I'll tell you that this is information that did not come from Abbott's files, okay, but I want you to let me know if you

recognize any of this type of information.

A. (Reviews document.)

MS. FUMERTON: I'm sorry. Can you repeat back -- did you ask a question?

MR. ANDERSON: Yeah, I'm ask- --

MS. FUMERTON: Can you --

MR. ANDERSON: Yeah. Well, it's simple. Review the document, then I'll rephrase.

MS. FUMERTON: Okay. I just missed the question.

MR. ANDERSON: It's no problem.

A. (Reviews document.)

Q. (BY MR. ANDERSON): Have you finished your review of Gerzel Exhibit 5?

A. Yes.

Q. Do you recognize any of the pages?

A. No.

Q. Look at the third page of Gerzel Exhibit 5. Does that look like what you were just describing, the new product addition information?

A. No.

Q. It doesn't?

A. No.

Q. You'll agree that it's got "NDC Number" and

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"Strength" like you described, correct?

A. Correct.

Q. And then it's got some prices listed, correct?

A. Correct.

Q. Next to the dollar signs?

A. Uh-huh. Correct.

Q. And the three prices that are listed are Wholesale Net, Direct, and AWP, correct?

A. Correct.

Q. Is there anywhere on this page a request for WAC?

A. I don't see one, no.

Q. Do you have any reason to believe that FirstDataBank would have been sending to Abbott new product addition forms that were different than what they sent to any other drug company?

MS. FUMERTON: Objection, form. Lack of foundation.

A. I -- I -- I don't know.

Q. (BY MR. ANDERSON): In what way does -- if any that you can recall, does the third page of Gerzel Exhibit 5 differ from the launch form that you were recalling?

A. The launch form that I -- it wasn't a very formal looking document, as well as it was just very

big writing with -- it wasn't, like, boxed or anything. I would just have -- it said "Product" and then maybe a line and "Strength" and a line, and it just went down just one general form.

And they were very similar between -- I -- I don't know if it was a form that they sent us or it's one we put together, but it was a form that we used to send out new product information.

Q. You'll agree that the third page of Gerzel Exhibit 5 reads "New Product Additions," correct?

A. Correct.

Q. And it appears to be a form that FirstDataBank would send to drug companies about launching a drug, correct?

MS. FUMERTON: Objection, form. Lack of foundation.

A. Correct.

Q. (BY MR. ANDERSON): Your answer was "correct"?

A. Uh-huh.

Q. Okay.

A. Yes.

Q. Now, if you could, take a look at what's going to be marked as Gerzel Exhibit 6.

(Exhibit 6 marked.)

A. (Reviews document.)

MS. FUMERTON: Jarrett, do you know if there's writing up here (indicating)?

MR. ANDERSON: Not writing. It's -- it- -- there's text, typed text December 1998, "Dear Valued Customer".

MS. FUMERTON: Do you know if there's anything above that?

MR. ANDERSON: No, I don't believe so?

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10 A. (Reviews document.)
 11 Q. (BY MR. ANDERSON): Do you recognize maybe
 12 not these particular sheets of paper, but documents
 13 similar to either the first page of Gerzel Exhibit 6
 14 or the second page?
 15 A. Not that I recall.
 16 Q. The second page appears to provide some
 17 information about a new product launch, correct?
 18 A. Yes.
 19 Q. Is that similar to what you were describing
 20 earlier, or is this different also?
 21 A. It looks different.
 22 Q. Okay. Do you recall ever receiving any
 23 correspondence or letters from FirstDataBank such as
 24 Gerzel Exhibit 6 -- the first page of Gerzel Exhibit
 25 6?

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1 A. No --
 2 MS. FUMERTON: Objection, form. Are
 3 you asking if she just -- in general or this
 4 particular type of letter?
 5 Q. (BY MR. ANDERSON): In general.
 6 A. No -- no, I don't recall.
 7 Q. You don't remember any correspondence at
 8 all?
 9 A. Any type of correspondence with
 10 FirstDataBank?
 11 Q. No. Any types of letters for -- written
 12 letters as opposed to e-mails. Did you receive any
 13 letters from FirstDataBank?
 14 A. I -- not that I recall.
 15 Q. Okay. Looking at the -- the second
 16 paragraph of the letter shown on the first page of
 17 Gerzel Exhibit 6, I'll read for the benefit of the
 18 record and ask you some questions.
 19 Plea- -- "Please review this
 20 printout. Any changes should be made. Return the
 21 corrected printout with affected dates of pricing
 22 changes, discontinued items and NDC changes as soon
 23 as possible. Your assistance in verifying the
 24 accuracy of this data can help prevent discrepancies
 25 in third party billing, inaccuracies in Medicaid drug

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1 rebates, and omission of your products from our drug
 2 file databases." Did I read that correctly?
 3 A. Yes.
 4 Q. Did you ever receive any type of
 5 information or instruction that's similar to that
 6 from FirstDataBank?
 7 A. Not that I recall.
 8 Q. Did you receive any type of information
 9 similar to that from Red Book?
 10 A. Other than the item we've already looked
 11 at, nothing --
 12 Q. Okay.
 13 A. -- that I recall.
 14 Q. Are you -- are you able to testify that, to
 15 your knowledge, Abbott did not receive any
 16 instructions similar to that from FirstDataBank?
 17 A. No.
 18 Q. You just don't remember one way or the
 19 other?
 20 A. I don't re- -- remember receiving anything,

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no.

Q. Right. But do you know that it didn't happen?

A. No, I don't.

Q. Okay. Did you ever receive anything known

as a National Drug Data File manual or ever review any such manual?

A. Hmm. It -- not that I recall.

Q. Did you have any type of access to PriceProbe?

A. Yes, I did.

Q. Was there a user manual that went along with PriceProbe?

A. Not -- not that I recall.

Q. Did you review any manuals or other types of information that concerned FirstDataBank information, such as the National Drug Data File or PriceProbe?

MS. FUMERTON: Objection, form.

A. Did you ask me if I've ever reviewed PricePro- --

Q. (BY MR. ANDERSON): Yes, ma'am.

A. -- -Probe? Yes, I have.

Q. No, no, no. I understand you've had access to PriceProbe, and other witnesses have talked about where you could access it and what have you --

A. Uh-huh.

Q. -- at PPD. I'm asking a different question. That is, did you ever review any kind of user manuals or other information that would guide a

person with respect to FirstDataBank information, such as National Drug Data File information or PriceProbe information?

MS. FUMERTON: Objection, form.

A. Not that I recall.

(Exhibit 7 marked.)

Q. (BY MR. ANDERSON): Take a look, if you could, at what's been marked as Gerzel Exhibit 7.

A. (Reviews document.)

Q. Does this document look familiar to you at all?

A. No, it doesn't.

Q. You mentioned that there were some hard copy files that were kept by Abbott regarding the pricing compendia, correct?

A. Correct.

MS. FUMERTON: Objection, form.

Q. (BY MR. ANDERSON): Did you ever actually have reason to review those files?

MS. FUMERTON: Objection, form.

A. The -- the price increase files that I referred to earlier?

Q. (BY MR. ANDERSON): Well, ye- -- those I understand you reviewed. I'm talking about any other files that were kept by Abbott.

Were there any other files kept by Abbott with respect to the pricing compendia?

A. There were --

MS. FUMERTON: Objection, form.

A. When I went to Corporate Records, I went

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through all of the pricing files -- the product and pricing maintenance files to look for the price increase letters.

Q. (BY MR. ANDERSON): And you found price increase letters, correct?

A. Correct.

Q. That were sent by Abbott to compendia like Red Book and FirstDataBank?

A. I -- I don't know if they were sent, but they were letters that were in the file.

Q. Presumably they were in the file because they were copies of what had been sent, correct?

A. I -- I don't know.

Q. Can you think of any other reason why they'd be in the file?

A. They could have been sent to our internal customers too.

Q. Well, were -- was there any indication about whether the letters had been sent to the compendia or customers or both?

0090

MS. FUMERTON: Objection, form.

A. Not that I recall, no.

Q. (BY MR. ANDERSON): How -- how -- how would you have re- -- how would Abbott -- strike that.

Did Abbott keep records of when it sent price increase notifications?

MS. FUMERTON: Objection, form.

A. I did, yes.

Q. (BY MR. ANDERSON): In what form?

A. In electronic form on our computer share drive.

Q. And to your knowledge, have those been produced in this litigation?

MS. FUMERTON: Objection, form.

A. I don't know.

Q. (BY MR. ANDERSON): Did you share those with your attorneys?

MS. FUMERTON: Objection, form. To the extent that she's had communications with her attorney as to what documents, that's going to be covered by the attorney-client privilege.

MR. ANDERSON: Well, no. I'm asking her if she shared the electronic records with you or someone else. That's not -- that's not privileged. That's definitely not -- that's definitely not.

0091

That's -- there's no legal advice that's being rendered. I'm just asking for a fact.

MS. FUMERTON: Be careful in what you answer, but you can answer whether or not you provided files to Legal.

A. I have provided paths to our share drives of where our files are at.

Q. (BY MR. ANDERSON): Did you provide a path to any legal counsel or personnel working with legal counsel that went directly to the electronic records of the price notification submission?

A. Not that went directly there, no.

Q. Okay. Do you have any information that your attorneys are aware that you have records of the price change submissions?

MR. BERLIN: Well, I -- I'm going to

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17 instruct the witness not to answer that question on
18 the basis of attorney-client privilege.

19 Q. (BY MR. ANDERSON): Are you refusing to
20 answer that question, ma'am?

21 A. Yes. I will take the advice of --

22 Q. Okay.

23 A. -- my counsel.

24 MR. ANDERSON: Look, I -- I want to --
25 Tara, I want to have these records of the price

0092 1 change submissions. I've been asking for all of the
2 communications with the compendia for months.

3 MS. FUMERTON: Yeah, you have.

4 MR. ANDERSON: Okay.

5 MS. FUMERTON: And to the extent that
6 there needs to be discussion about document
7 production issues, we can do that off the record and
8 I will discuss with you what I know about the
9 situation, but to ask the witness what her attorneys
10 know is inappropriate.

11 You can ask the witness what she had
12 provided, which she did, and which I allowed you to
13 do. But the other question you asked is
14 inappropriate, and I am more than happy to have a
15 discussion off the record with you about any issues
16 that you have with respect to document production.

17 MR. ANDERSON: Well, that's -- that's
18 fine. We -- I mean, certainly I'm interested in
19 discussing it, but my point is, I've sought all of
20 the information pertaining to the communications for
21 a long time and it sounds like there's some
22 information out there that I don't have.

23 So, you know, if you want to prevent
24 me from learning what that information is, I think
25 that's inappropriate. I just want to learn what's

0093 1 out there, and I want to learn what she's provided to
2 y'all.

3 And, you know, I'm not trying to get
4 into your communications with her or some kind of
5 discussion about the production of the information.
6 I'm trying to ascertain what she has shared --

7 MS. FUMERTON: You --

8 MR. ANDERSON: -- with her lawyers.

9 MS. FUMERTON: You have -- well,
10 but -- but there is -- there -- therein lies the
11 rub. You have asked her about files and whether or
12 not she understands certain files exist or do not
13 exist and what they are. You also -- which I allowed
14 her to answer.

15 You also asked her what information or
16 documents she provided to attorneys, and she answered
17 that information.

18 The questions you're asking are
19 inappropriate and go beyond that.

20 MR. ANDERSON: Okay. I'm going to --
21 I'm going to tie this up and then we'll -- we'll go
22 back to where we were.

23 Q. (BY MR. ANDERSON): Ms. Gerzel, do you have
24 an awareness that Abbott has records, whether they be
25 electronic or paper, that reflect when Abbott sent

0094 1 price change notifications?

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MS. FUMERTON: Objection, form.

A. From the time frame that I did this job, I shar- -- saved the price letters that we talked about with those various salutations onto the share drive, yes.

Q. (BY MR. ANDERSON): And have those letters that you saved electronically on the share drive been provided by you to counsel?

A. I have been asked by legal over the course of -- I'm not sure when, or related to this case, to provide paths to where those letters exist, and I have provided that path.

Q. Okay. Other than providing that path, have you provided any other information?

A. No, I have not.

Q. All right. Would that electronic storage of the letters reveal when the letters were sent?

A. I believe they have a date, like the one that we looked at, that said "effective" with such-and-such a date, price change -- the price has been changed.

Q. Okay. And would those letters also reveal the entities that received the letters?

A. No, they would not.

Q. They just have the general salutations of the categories we've discussed?

A. That is correct.

Q. One being Medicaid administrators, correct?

A. Correct.

Q. One being data vendors, correct?

A. Correct.

Q. One being customers?

A. Correct.

Q. And there's potentially another one that you're not remembering?

A. One being wholesalers.

Q. Wholesalers, right.

I understand your testimony that the data vendor letters would encompass FirstDataBank, Red Book, and Medi-Span, correct?

A. I believe so.

Q. Would -- and the Medicaid administrators include a list of persons that were identified as Medicaid administrators, correct?

A. Correct.

Q. Where are the lists kept of the Medicaid administrators and all of the other customers and wholesalers and price -- and data vendors that are covered by the different salutations?

A. With Xpedite.

Q. Only with Xpedite?

A. That I'm aware of.

Q. And has there been any effort to go to Xpedite and get those?

MS. FUMERTON: Objection, form.

Q. (BY MR. ANDERSON): To your knowledge.

A. I don't know.

Q. Has there been any effort to obtain -- did -- did Abbott control the -- strike that. I'll rephrase.

Did Abbott have control over which

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entities were part of the Xpedite lists?

A. Yes.

Q. How?

A. By going into Xpedite's database and adding and/or deleting those lists.

Q. I see. So while the list was an electronic list kept on Xpedite's computer, Abbott personnel had access to it via the internet and could modify it?

A. Correct.

Q. Can Abbott personnel also go via the internet and retrieve the list?

MS. FUMERTON: Objection, form.

A. I don't know.

Q. (BY MR. ANDERSON): Do you have any reason to believe that Abbott personnel cannot retrieve the list from Xpedite?

A. No.

MS. FUMERTON: Objection, form. And are you asking today?

MR. ANDERSON: Well, I realize they may have switched, but --

Q. (BY MR. ANDERSON): I'm -- I'm asking, during your experience, was there anything that prevented Abbott from retrieving the list from Xpedite?

A. Not -- not that I know of. I don't know.

Q. Okay. Now, going back to the hard copy files, were you ever able to review the hard copy files kept by Abbott with respect to FirstDataBank, Red Book, and Medi-Span?

MS. FUMERTON: Objection, form. Lack of foundation.

A. I'm not sure what hard copy files you're referring to.

Q. (BY MR. ANDERSON): Are there any hard copy files other than the electronic letters that you've described?

A. The -- the --

MS. FUMERTON: Objection, form.

A. The only ones that I'm aware of are the ones that we discussed that I had to go back to for legal to obtain copies of any price letters that existed in our hard copy files.

Q. (BY MR. ANDERSON): Okay. I'm going to -- I -- I appreciate that. Other than these letters that had the salutations that were letters created by Abbott and sent out by Xpedite, other than those letters, are there any other files, whether they be electronic or hard copy, that Abbott maintained with respect to Abbott communications with data vendors like FirstDataBank and Red Book?

MS. FUMERTON: Objection, form.

A. The only thing I know of that I would have kept would have been additions and product launch information that would have been sent to them, as well as product discontinuations that would have been sent to them.

Q. (BY MR. ANDERSON): And would those have been kept electronically or in paper form or both?

A. Definitely on the share drive.

Q. What about in any paper form?

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A. I -- I don't know. I don't recall one way or the other.

Q. Okay. For instance, we've -- you've seen today some Red Book price verification reports, correct?

A. Uh-huh.

Q. And you recognize that you completed those in the past, correct?

A. Uh-huh.

Q. Were copies of those kept by Abbott?

A. I -- I don't know. I don't remember if I kept my copy or not.

Q. Do you have any reason to believe you did not keep a copy?

A. I have no reason to believe one way or the other. I don't know.

Q. Have you had -- are you aware of any search of records to ascertain whether those documents were kept?

MS. FUMERTON: To the extent that you have independent direct knowledge, you can answer the question. To the extent that it's something you learned from attorneys or you -- then you cannot answer the question.

A. The only thing that I know I was asked for was a link to where information was kept, and that's the same link I've been referring to that I provided,

a very speci - -- a very -- a link that went directly to where I saved any information.

Q. (BY MR. ANDERSON): Okay. Did you or anyone else to your knowledge, outside of what you learned from a lawyer, search any hard copy files at Abbott PPD or Abbott Corporate Records, slash, archives?

A. I don't know.

MS. FUMERTON: Objection, form.

A. I don't know.

Q. (BY MR. ANDERSON): You don't know that that's been done?

A. I don't know anything about it one way or the other.

Q. Okay. Do you -- back to Gerzel Exhibit 7 now. Do you have any reason to believe that Abbott would have destroyed any user manual information it would have received from FirstDataBank?

A. No.

Q. Is it your experience that Abbott has some type of routine document destruction policy?

A. We have archive retention schedules.

Q. But you don't know what those are?

A. No.

Q. Do you have a general idea?

A. I mean, I have a general idea of where to go to see what they are, but my general understanding is, you know -- I just -- I just know where to go to see what the -- if I need to see what it is.

Q. Have you ever had any reason to go to Corporate Records to try to track down some old documents in any context?

A. Yes.

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Q. And what was your experience with respect to how old the documents were?

A. Just -- MS. FUMERTON: Objection, form.

A. The specific year I don't recall, but they were old, yellow.

Q. (BY MR. ANDERSON): Like back into the '80s?

A. I have -- I -- I have no idea of the year.

Q. Were they -- do you have any kind of general impression that Abbott's document retention policy is at least requiring documents to be kept ten years?

A. I -- I have no idea.

Q. Oh, okay. Back -- I'm sorry. Back to Exhibit 7, ma'am. Do you see on the last page in the Table of Contents there's a reference to "Wholesale

Unit Price and Date"?

A. Yes, I do.

Q. And then next to that is an acronym "WHN," correct?

A. Correct.

Q. And then next to that is a page number of page 148?

A. Correct.

(Exhibit 8 marked.)

Q. (BY MR. ANDERSON): Now, if you could, take a look at page number 148 that's been marked as Deposition Exhibit 8.

A. (Reviews document.)

Q. Have you reviewed Exhibit 8?

A. Yes.

Q. Do you agree it's titled "Wholesale Unit Price and Date"?

A. Yes.

Q. And that same acronym of "WHN" is shown, correct?

A. Correct.

Q. And the -- under the section titled "Field Content," it reads, "This element provides a manufacturer's wholesale net unit price and associated date." Did I read that correctly?

A. Yes.

Q. Do you have any understanding of what a wholesaler's whole- -- pardon me, a manufacturer's wholesale net unit price is?

A. No.

Q. Did you ever understand FirstDataBank or Red Book was requesting wholesale net prices?

A. Wholesale acquisition cost is what they were requesting, to my knowledge.

Q. Do you consider those to be net prices?

MS. FUMERTON: Objection, form.

A. I -- I consider them to be the wholesale acquisition cost, or WAC price.

MR. ANDERSON: Objection, nonresponsive.

Q. (BY MR. ANDERSON): I realize that. Do you wholesale acquisition cost to be a net price?

A. I don't --

MS. FUMERTON: Objection, form.

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A. I don't con- -- I -- I -- I don't have a --
I don't consider net price to be anything. I don't
consider it at all. I'm not quite understanding your
question considering I've not heard of this
particular term before.

Q. (BY MR. ANDERSON): Are you aware of any

documentation showing FirstDataBank requesting WAC
prices from Abbott?

A. No particular document, no.

Q. Were you instructed to report WAC prices
specifically by Abbott personnel?

A. When I was trained, yes.

Q. Who -- that was Tina Calvert?

A. Correct.

Q. Were you -- were you told, quote -- strike
that.

Were you told to report, quote,
"W-A-C" prices, or were you told to report some
other prices like wholesale prices?

A. WAC, W-A-C.

Q. Do you have any idea why Tina instructed
you to report, quote, "WAC" prices?

A. That was our understanding of what should
be reported to FirstDataBank.

Q. What's the basis of that understanding?

A. Mine is my training.

Q. From Tina?

A. Correct. I don't know Tina's basis.

Q. Okay. Any other basis that you're aware
of?

A. No.

Q. Have any of these references to wholesale
net, WHN, WHLNET prices caused you to rethink
Abbott's submission of WAC prices to FirstDataBank?

MS. FUMERTON: Objection, form.

A. No.

Q. (BY MR. ANDERSON): Why not?

A. Because it- -- it's our -- my understanding
to report list and WAC, and our published WAC price
is our AW- -- A- -- WAC price.

Q. Okay. But I'm saying, has -- have any of
these references to wholesale net prices caused you
to rethink Abbott's understanding that it should send
WAC?

MS. FUMERTON: Objection, form.

A. No, it has not.

Q. (BY MR. ANDERSON): Why not?

A. I -- I don't -- I don't think re- -- I
think reporting list and WAC is what we're supposed
to do, and that's what we've done.

Q. And you base that on your training from
Tina?

A. Correct.

Q. How long did that training last?

A. I don't know. I mean -- I have no idea.

Q. 30 minutes?

A. Training, I mean, can last -- you
crosstrain with someone in and out throughout a day,
sometimes it's a couple of hours, and then another
couple of weeks hours a day. I mean, it's all --

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5 Q. It was just very informal training?
6 MS. FUMERTON: Objection, form.
7 A. I -- I don't know what your definition of
8 "informal training" is.
9 Q. (BY MR. ANDERSON): It was -- it -- was
10 there any specific time set aside where you and Tina
11 sat down and talked about FirstDataBank submissions,
12 for instance?
13 MS. FUMERTON: Objection, form.
14 A. I don't know specifically that, but
15 specific times set aside to train, yes.
16 Q. (BY MR. ANDERSON): And -- and describe how
17 the training would take place.
18 MS. FUMERTON: Objection, form.
19 A. We would both be sitting in whichever -- my
20 cube, her cube, going through, "Okay. Oh, this is
21 what's due today, let's figure out how to do it," or
22 "this is what's due in the next week," "this is your
23 normal job responsibilities, let's go through and
24 I'll show you how to do each one".
25 Q. (BY MR. ANDERSON): Thi - -- with respect to

0107
1 this instruction that you received from Tina to
2 submit WAC prices, did she pro- -- show you any
3 documentation at all?
4 MS. FUMERTON: Objection, form.
5 A. I -- I don't know -- what's the -- I don't
6 understand the question.
7 Q. (BY MR. ANDERSON): Did -- was it purely
8 verbal, or did she show you any paper at all that
9 substantiated her statement that you should report
10 WAC prices?
11 MS. FUMERTON: Objection, form.
12 A. I don't know. I -- I don't recall the
13 specifics of our training.
14 MS. FUMERTON: Jarrett, can we take
15 another five-minute break sometime soon? I need
16 to --
17 MR. ANDERSON: I'll make a --
18 MS. FUMERTON: I promise it will be --
19 MR. ANDERSON: Yeah.
20 MS. FUMERTON: I promise --
21 MR. ANDERSON: Yeah.
22 MS. FUMERTON: -- it will be quick.
23 MR. ANDERSON: Let's start back at

24 11:00.
25 MS. FUMERTON: All right.

0108
1 THE VIDEOGRAPHER: We are off the
2 record at 10:54 a.m.
3 (Recess taken.)
4 (Exhibit 9 marked.)
5 THE VIDEOGRAPHER: We are back on the
6 record. It is 11:03 a.m. This is the beginning of
7 tape 3.
8 Q. (BY MR. ANDERSON): Ms. Gerzel, please take
9 a look at what's been marked as Gerzel Exhibit 9.
10 A. (Reviews document.)
11 Q. Have you seen the documents that make up
12 Gerzel Exhibit 9 before?
13 A. I'm -- I'm assuming so. They look familiar
14 from my e-mail.
15 Q. Which particular pages look familiar?

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16 A. Red Book 00599.
 17 Q. Uh-huh.
 18 A. Red Book 00600. (Reviews document.) I'd
 19 say those two. Those two.
 20 Q. Have you reviewed these documents recently
 21 with your lawyers?
 22 A. No, I have not.
 23 Q. Have you seen document Red Book 00597
 24 before?
 25 A. (Reviews document.) I don't recall it.
 0109
 1 Q. Looking at document -599, this appears to
 2 be an e-mail between you and Red Book, correct?
 3 A. Correct.
 4 Q. And initially, on July 28th, 2005, you sent
 5 some price change notifications to Red Book, correct?
 6 A. Correct.
 7 Q. And then in turn, Traci Kellam from
 8 Red Book responded and asked you to confirm an AWP
 9 formula; is that correct?
 10 A. That's correct.
 11 Q. And then she's written, apparently, in the
 12 upper left -- I mean right-hand corner a note that
 13 you had responded verbally; is that correct?
 14 A. That is what she wrote.
 15 Q. Is that true?
 16 A. Not that I recall.
 17 Q. Have you ever spoken with Traci Kellam?
 18 A. I do believe so.
 19 Q. But you do not think that you spoke to her
 20 about the AWP formula?
 21 A. I don't believe so.
 22 Q. Why not?
 23 A. It is not -- was not the general policy
 24 when I was in this role to discuss AWP, period.
 25 Q. Why not?
 0110
 1 A. Because it was not a price type that Abbott
 2 was part of publishing or communicating.
 3 Q. Were you told not to talk about AWP?
 4 A. I have a general recollection of having
 5 discussions that AWP was not something that Abbott
 6 was responsible for and we were not to give any
 7 indication that we were.
 8 Q. Did you have discussions with particular
 9 people?
 10 A. I don't recall.
 11 Q. Do you -- you don't remember any of the
 12 specifics of the discussions?
 13 A. I don't.
 14 Q. Have you or anyone to your knowledge ever
 15 instructed Fir- -- Red Book to stop publishing AWP?
 16 A. I have -- no -- no.
 17 Q. Do you believe that you received this
 18 e-mail that's shown on Red Book 00599?
 19 A. Do I believe I received it?
 20 Q. Yes.
 21 A. It appears that way, yes.
 22 Q. Do you believe -- believe you read the
 23 portion of he- -- her e-mail to you where she wrote,
 24 We currently have AWP equals WAC plus 20 percent per
 25 Red Book company policy due to Abbott Pharmaceuticals
 0111

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no longer supplying Red Book with a calculated AWP?

A. I don't recall reading this document. I don't know.

Q. You recall getting the e-mail, but you don't think you read that?

A. No, I don't recall getting the e-mail. I'm saying it appears it was sent to me.

Q. Okay.

A. I don't -- I don't have a recollection of this e-mail.

Q. Do you have any reason to believe you didn't get this e-mail?

A. No.

Q. Do you have any reason to believe you didn't read the language contained in the e-mail?

A. No.

Q. Were you aware that Red Book was trying to get Abbott's confirmation about the AWP formula?

A. I am aware in reading this that that's what it's saying, yeah.

Q. And does that refresh your memory about efforts by Red Book to get Abbott's confirmation regarding an AWP calculation?

A. It -- it doesn't -- no, this -- not to get this sp- -- it doesn't refresh my memory on this

e-mail, no.

Q. Do you have any reason to dispute that Ab- -- I mean -- pardon me. Do you have any reason to dispute Red Book documents or testimony that Red Book sought to get confirmation from Abbott about a formula to calculate AWP?

A. No, but I don't recall -- I -- I don't -- wouldn't have responded as they had written, though, either.

Q. You think she's lying?

A. I don't believe that I would have discussed AWP policy with her. That was not in my job.

Q. Do you know why you didn't respond in writing to tell her that Abbott refuses to confirm any AWP formula or calculation?

MS. FUMERTON: Objection, form. Lack of foundation.

A. Can you repeat the question?

Q. (BY MR. ANDERSON): Did you respond in writing instructing Red Book that Abbott would not confirm any AWP calculations?

A. To this e-mail?

Q. Ever.

A. I do recall an e-mail that I had written regarding Abbott not having any -- I -- I don't

recall the -- the details of the e-mail -- that Abbott does not set AWP or have anything to do with that.

Q. And have you reviewed that e-mail recently?

A. I have not.

Q. Why did you not respond to Ms. Kellam's e-mail in July of 2005?

MS. FUMERTON: Objection, form.

A. I have no --

MS. FUMERTON: It misrepresents testimony.

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12 A. I have no recollection of this e-mail.
 13 Q. (BY MR. ANDERSON): Do you think you
 14 responded to this e-mail?
 15 A. I don't know.
 16 Q. Similarly, there's another e-mail on the
 17 next page Bates labeled Red Book 00600 dated August
 18 2nd, 2005, correct?
 19 A. Correct.
 20 Q. And what happened here was you sent in
 21 another price change for a different PPD drug,
 22 correct?
 23 A. Correct.
 24 Q. And then, in turn, Traci Kellam, again,
 25 responded asking for Abbott's confirmation about an
 0114 AWP calculation, correct?
 1 A. Correct.
 2 Q. Did you respond to this e-mail?
 3 A. I -- I don't know.
 4 Q. You see another note there where she quotes
 5 the date and time when you responded verbally?
 6 A. I see that she wrote that, yes.
 7 Q. Do you believe that's a lie?
 8 A. I don't believe I had any conversations
 9 with her regarding AWP policy.
 10 Q. Do you have any reason how she could have
 11 come up with such a precise date and time for the
 12 conversation?
 13 MS. FUMERTON: Ob- -- Objection,
 14 form. It misrepresents what's written there.
 15 A. I don't know.
 16 MR. ANDERSON: What's the
 17 misrepresentation?
 18 MS. FUMERTON: Well, it -- you're
 19 saying that this notation refers to a conversation
 20 regarding AWP policy, and that's simply not what it
 21 says.
 22 MR. ANDERSON: Really? What do you --
 23 what do you think it says?
 24 MS. FUMERTON: I'm not testifying as
 0115 to what it says, but it does not say anything about
 1 an AWP policy.
 2 MR. ANDERSON: Hmm. All right.
 3 Q. (BY MR. ANDERSON): Ms. Gerzel, if you
 4 could, look at the page of Exhibit 9 that's Bates
 5 labeled 00596.
 6 A. (Reviews document.)
 7 Q. Do you agree that appears to be a fax cover
 8 sheet from Traci Kellam to you?
 9 A. Yes.
 10 Q. Do you believe you received this?
 11 A. I don't recall it.
 12 Q. It's dated August 9th, 2005, correct?
 13 A. Correct.
 14 Q. Do you have any reason to believe you did
 15 not receive this around August 9th, 2005?
 16 A. No.
 17 Q. Do you agree that the date August 9th,
 18 2005 coincides with the e-mail notations that were
 19 handwritten by Ms. Kellam -- I mean, pardon me,
 20 the phone call notations that were handwritten by
 21 Ms. Kellam?
 22

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23 A. Yes, it does.
 24 Q. Okay. And she writes, "Hi April, Per our
 25 conversation today, concerning no changes being made
 0116 to the existing AWP policy, please see the attached
 1 AWP confirmation letter from Red Book." Did I read
 2 that correctly?
 3 A. Yes, you did.
 4 Q. Then she gives you her contact information
 5 if you have any questions, correct?
 6 A. Correct.
 7 Q. Do you believe you contacted her with any
 8 questions?
 9 A. I don't know.
 10 Q. Looking at the next page which is the
 11 actual letter, do you see that it's dated August 9th,
 12 2005?
 13 A. Yes.
 14 Q. And it's to you, correct?
 15 A. Correct.
 16 Q. And she's got your correct job title
 17 listed, correct?
 18 A. Uh-huh.
 19 Q. And she writes, This letter is in regards
 20 to our verbal conversation concerning AWP for Abbott
 21 Pharmaceutical's, products on August 9th, 2005 at
 22 11:50 a.m. In the absence of a manufacturer provided
 23 AWP or a manufacturer calculated markup to establish
 24 an AWP, we will be implementing a 20-percent markup
 25 above WAC to calculate AWP. Did I read that
 0117 correctly?
 1 A. Yes.
 2 Q. Do you believe you were made aware of that?
 3 A. It appears she sent this to me, yes.
 4 Q. Do you have any reason to dispute the fact
 5 that you were made aware of this calculation of AWP?
 6 A. No.
 7 Q. Are you aware of any efforts by Abbott to
 8 stop Red Book from publishing AWP's based upon that
 9 calculation?
 10 MS. FUMERTON: Objection, form.
 11 A. I -- I wouldn't know. I don't know.
 12 Q. (BY MR. ANDERSON): So the answer is you're
 13 not aware of any efforts?
 14 A. I don't know.
 15 Q. You don't know of any efforts --
 16 A. I don't --
 17 Q. -- correct?
 18 A. Yeah.
 19 Q. Okay.
 20 A. I don't know of any efforts.
 21 MS. FUMERTON: Jarrett, are you
 22 confident this is a complete document? Because I
 23 have seen a version of this document that has sort
 24 of, I think, a key page missing.
 25 0118 MR. ANDERSON: Hmm. Well, I don't --
 1 I don't know. These are sequential.
 2 MS. FUMERTON: I know, and I'm
 3 wondering if it comes before.
 4 MR. ANDERSON: I don't know. I -- I'm
 5 pretty confident that I used this in the Red Book
 6

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deposition, but maybe -- it's been several months, maybe not.

Q. (BY MR. ANDERSON): Ms. Gerzel, if you could, take a look at what was marked yesterday as Parker Exhibit 5.

A. (Reviews document.)

Q. Do you recognize this document?

A. No.

Q. Have -- have -- are you familiar at all with bid schedules?

A. I am familiar with the name, yes.

Q. Does this appear to be a bid schedule from 2002?

A. Actually, I've never been in the bid schedule file.

Q. You've heard the name, but you've never actually seen the prices?

A. I've never been in the file.

Q. Do you have access to it?

A. I don't know.

Q. Looking at the different types of pricing, you mentioned that you, as a part of your role in chargebacks, would input pricing, correct?

A. Correct.

Q. Would -- and from what source would you gain the prices so that you could input them into AES?

A. It was dependent on what I was putting into AES, if it was a product -- new product launch, or if it was a price increase.

Q. What would you use for the sources for price increases?

A. Typically I would receive notification from Joe Fiske on what the price increase would be.

Q. What about price decreases such as decreases in chain prices or base deal prices?

A. You mean if we had special deals out --

Q. Yes.

A. -- there? I would -- if it was part of a new product launch, I would typically receive it from Trade Relations.

Q. Okay. So you would get price increases from Pricing, but you would get special prices from

Trade Relations?

A. Yes.

Q. And then, in turn, you would input those into AES?

A. Correct.

Q. And Trade Relations was Tip Parker's department?

A. At the time, it was Kathy Eckerman's department, and Tip worked for her.

Q. Okay. Would -- who specifically in Trade Relations would send you the special pricing, like chain pricing or RBG pricing or deal pricing?

A. If there were deals associated with new product launches and whatnot, they would typically come from Tip.

Q. Her individually?

A. Yes.

Q. Do you have any idea how Ms. Parker was

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19 obtaining those prices?

20 A. No, I don't.

21 Q. Looking at the -- the 2002 bid schedule,
22 you see a column second from the right titled 2001
23 through 2003 Base Deal?

24 A. Yes.

25 Q. And then looking at the actual products,

0121

1 there's -- the only product that has any base deal
2 prices is the various forms of the erythromycins,
3 correct?

4 A. Correct.

5 Q. Do you know why that is?

6 A. I recall an Ery deal being in effect during
7 the time I was there, yes.

8 Q. Was it pretty unique amongst all the PPD
9 drugs that Erys had deals that lasted for years?

10 MS. FUMERTON: Objection, form.

11 A. I -- I don't know. I -- I was only there
12 for a certain period of time. I don't know for --
13 before that or after that.

14 Q. (BY MR. ANDERSON): Well, while you were at
15 PPD Pricing, are you aware of any PPD drugs other
16 than the Erys having deal prices in place for years?

17 MS. FUMERTON: Objection, form.

18 A. I'm aware of other products having deal
19 prices. I don't recall them being out there for
20 years.

21 Q. (BY MR. ANDERSON): Do you recall that the
22 Erys had deal prices in place for years?

23 A. I recall that when I came into that role,
24 Ery had a deal price, and sometime during the role
25 when I was there, it -- it went away.

0122

1 Q. You're referring to July of 2003?

2 A. As what date?

3 Q. When Ery was dis- -- Ery deal prices were
4 discontinued.

5 A. Oh, I'm not -- I'm not sure of the exact
6 date that it was discontinued.

7 Q. Do you recall any circumstances around why
8 the Ery deal price -- deal prices were discontinued?

9 A. No, I don't. I don't know why.

10 Q. Were you involved at all in notifying the
11 industry of the discontinuation of Ery deal prices?

12 A. Not that I recall, no.

13 Q. Now -- looking at the bid schedule, do you
14 see the acronym WAC on the bid schedule at all?

15 A. (Reviews document.) I do not see W-A-C,
16 no. I see something called "wholesale" but nothing
17 WAC.

18 Q. Did Abbott refer to any of its prices as
19 "WAC prices"?

20 A. I'm sorry. What --

21 MS. FUMERTON: Objection, form.

22 A. What was your question?

23 Q. (BY MR. ANDERSON): Did Abbott refer to any
24 of its prices -- strike that.

25 In the AES system, did Abbott have any

0123

1 prices referred to as WAC, quote, "W-A-C," close
2 quote, prices?

3 A. In AES, Pricing has an alphanumeric bucket.

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Q. Oh, right. Well, do you know if that field referred to wholesale prices or was it WAC, quote, "W-A-C"?

A. Wholesale acquisition cost.

Q. Where -- where was that written?

A. I don't -- I don't know where it's written.

Q. Do you know if it is written?

A. I -- I don't know.

Q. Look, if you can, at what's been marked in this case as Garvin Exhibit 13.

A. (Reviews document.)

Q. My questions are going to be pretty straightforward, ma'am. I'm looking at the second page primarily.

A. Okay.

Q. And I'm just wanting to know a little bit about that July 1st, 2003 e-mail by you.

A. Uh-huh.

Q. You agree that that appears to be an e-mail you sent, correct?

A. Correct.

Q. And you've got a couple of notifications. One is an Ery price notice Word document, and the other is an Ery deal document in Excel, correct?

A. That's -- yeah, that's what it looks like.

Q. And you say, "Attached is the new Ery Deal, it was sent this morning to wholesalers via broadcast fax," correct?

A. Correct.

Q. Why were you the person notifying PPD personnel of this situation?

A. Because it would have been under my roles and responsibility to enter this into AES and, therefore, make the communication.

Q. And how did you -- how -- how did you input the prices into AES?

A. How did I input them? I --

Q. That might be too vague. I'm sorry. Just mechanically, if you can, walk me through what changes you made in AES as a result of the discontinuation of base deal pricing.

A. I can talk to you generally how it's done. I don't specifically remember this particular deal.

Q. Okay.

A. But I can discuss generally how --

Q. Okay.

A. -- the deals are done.

In AES there's a particular type of -- I don't know if it's called transaction type that you go down called "AES Deals" that takes you to a screen where you can input various point- -- types of information, such as NDC numbers that are going to be eligible for any special discounting, things like customer information, customer classes of trade, other items like what price we might want to give them, is there any special purchasing requirements, any changes to terms, and there might be other things that I'm not aware of.

Q. And so if Ery deal prices were discontinued, what most likely would that have caused

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you to do in AES?

A. If a deal were to be discontinued, I would change the effective dating of the deal to have it end. You had an effective date and an effective end date -- a start and end date.

Q. And then as a result, the computer wouldn't use that pricing to populate bill -- invoices and what have you?

MS. FUMERTON: Objection, form. Lack of foundation.

A. If the -- if the date was put in and a

transaction tried to go past that date, anything that was on that deal to override a normal sale --

Q. (BY MR. ANDERSON): Uh-huh.

A. -- would not be used anymore.

Q. I got it. Did -- other than the AES involvement, did you have any other role whatsoever with the discontinuation of base deal pricing on the erythromycins?

A. No.

MR. ANDERSON: All right. I'll pass the witness.

MS. FUMERTON: Okay. I need to take a quick break. I just sent an e-mail looking for a document. So can we just take a quick break and then I will be back and ask a couple of questions?

Is there -- Michael, are you there?

Okay. I'm assuming he doesn't have any questions.

Let's go off the record.

THE VIDEOGRAPHER: We're off the record at 11:27 a.m.

(Recess taken.)

REPORTER'S NOTE: (Mr. Jarrett Anderson is participating via telephone through the continuation of the deposition.)

(Exhibit 10 marked.)

THE VIDEOGRAPHER: We are on the record at 12:07 p.m.

EXAMINATION

BY MS. FUMERTON:

Q. Ms. Gerzel, do you recall that prior to taking a break, Mr. Anderson was asking you a series of questions about communications you had with Red Book regarding AWP?

A. Yes.

Q. Can you please take a look -- and -- and do you recall that you also testified that you recalled sending an e-mail to Red Book explaining that Abbott did not set AWP and -- do you recall that?

A. Yes.

Q. Could you please take a look at Exhibit No. 10?

A. (Reviews document.)

Q. And I'm specifically going to draw your attention to the fifth page of the document that has the Bates range Red Book 01413.

A. Okay.

Q. On the page that's marked Red Book 01413, do you see what appears to be an e-mail that you sent to Traci Kellam at Red Book?

A. Yes, I do.

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1 Q. Could you please -- do you recall sending
2 this e-mail to Traci Kellam?

3 A. I -- yes, I do.

4 Q. Could you please read the text of the
5 e-mail to Traci for the record?

6 A. "Traci, I believe it is important for me to
7 clarify what occurred in April 2003. As you may be
8 aware, in April 2003, Ms. Voeck wrote, 'In the
9 absence of the manufacturer provided AWP or a
10 manufactured calculated markup to establish an AWP,
11 we will be implementing a 20-percent markup above
12 WAC to calculate AWP.' Later in that same letter,
13 Ms. Voeck wrote, 'This is in accordance with our
14 company policy for calculation of AWP.' Of course,
15 Abbott does not control how Red Book does its
16 business nor does Abbott provide AWP or a calculated
17 markup to establish an AWP. Consequently, Abbott
18 concluded that there were no need to respond to Ms.
19 Voeck's April 2003 letter. Abbott trusts that Red
20 Book will continue to conduct its business as it sees
21 fit and that it will get independent legal advice
22 when Red Book deems it appropriate. Thank you for
23 your attention to this matter."

24 Q. And do you recall why you sent this e-mail?

25 A. I recall that it was in response to an

0129

1 e-mail that they had sent regarding their AWP policy
2 and wanting to establish that Abbott does not set AWP
3 or have anything to do with it.

4 Q. So you sent this e-mail to Red Book to make
5 it clear that Abbott did not care in any way how
6 Red Book would establish an AWP for its products; is
7 that correct?

8 MR. ANDERSON: Ob- -- Objection,
9 form. And, Tara, if I could interject. What's the
10 date of the e-mail?

11 MS. FUMERTON: The date of the e-mail
12 is July 13th, 2004.

13 MR. ANDERSON: Okay. Thank you.

14 A. That is correct.

15 Q. (BY MS. FUMERTON): Thank you. And,
16 Ms. Gerzel, do you also recall testifying earlier
17 today that you are aware of a system at Abbott that
18 contains AWP information?

19 A. Yes, I do.

20 Q. Could you please describe what that system
21 is and what it is used for?

22 A. The system is called Many Medicaid, and it
23 is used for calculating and making payments to our
24 Medicaid rebate program and supplemental and ASPAP
25 programs.

0130

1 Q. Who, to your knowledge, has access to that
2 information?

3 A. I do, as well as the other managers in the
4 government team and the analysts that work on
5 calculating rebate per units and pay Medicaid
6 payments.

7 Q. So is it true that only people involved in
8 calculating Medicaid rebates, whether they be
9 supplemental or otherwise, have access to that
10 information?

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A. That is correct, with the exception of IT that support Government.

Q. And -- and they're there just to support any technical issues that you may have; is that correct?

A. That's correct.

Q. And you mentioned that you use the system -- or you use the AWP's in the system for calculating state supplemental rebates; is that correct?

A. Yes, it is.

Q. And isn't it true that -- well, could you please explain how AWP would be used in calculating the state supplemental rebate?

A. A -- some states will have a formula to

calculate their rebates based on AWP minus a certain percent, and those formulas are put into our system to calculate and thus pay the rebates accordingly to those contracts in that state.

Q. So is it true that if -- the higher the AWP that Abbott has on a particular product, if that product is subject to a state supplemental rebate, the higher the rebate will be that Abbott pays to the Medicaid agency?

A. That is correct.

Q. And to your knowledge, does anybody else in the Pricing Department other than those individuals that work with the Medicaid rebate program have access to that AWP information that is contained in the many Medicaid system?

A. No, they do not.

Q. To your knowledge, has anyone at Abbott set prices on any of the erythromycin drugs to increase Medicaid payments?

A. No, not to my knowledge.

Q. To your knowledge, has anyone at Abbott reported prices on the Ery drugs to increase Medicaid payments?

A. No.

MS. FUMERTON: Thank you. I have no other questions.

MR. ANDERSON: Thank you for your time, Ms. Gerzel.

THE WITNESS: Thank you.

MS. FUMERTON: Thank you.

MS. FUMERTON: We're concluded.

MR. BERLIN: Okay. Great.

THE VIDEOGRAPHER: We are off the record at 12:13 p.m. This is the end of tape 3. (Deposition concluded.)

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CHANGES AND SIGNATURE
WITNESS NAME: APRIL GERZEL February 20, 2009
PAGE/LINE CHANGE REASON

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I, APRIL GERZEL, have read the foregoing
deposition and hereby affix my signature that same is
true and correct, except as noted above.

APRIL GERZEL

THE STATE OF)
COUNTY OF)

Before me, , on this
day personally appeared APRIL GERZEL, known to me [or
proved to me on the oath of or
through (description of identity
card or other document)] to be the person whose name
is subscribed to the foregoing instrument and
acknowledged to me that she executed the same for the
purposes and consideration therein expressed.
(Seal) Given under my hand and seal of office
this day of , 2009.

Notary Public in and for
the State of Texas

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THE STATE OF TEXAS)
COUNTY OF BEXAR)

I, TAMMY POZZI, Certified Shorthand
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Reporter in and for State of Texas, do hereby certify that, pursuant to agreement of counsel, there came before me on February 20, 2009 at 8:32 a.m. in the law offices of Jones Day, 77 West Wacker, 35th Floor, Chicago, Illinois, the following named person, to-wit: APRIL GERZEL, who was by me duly sworn to testify to the truth and nothing but the truth of her knowledge touching and concerning the matters in controversy in this cause; that she was thereupon carefully examined upon her oath and her examination reduced to typewriting under my supervision; and that the deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto nor financially interested in the action.

IN WITNESS WHEREOF I have hereunto set my hand and seal on this the 5th day of March, 2009.

C. S. R. NUMBER 5629
Expires 12/31/10

TAMMY POZZI, Certified
Shorthand Reporter in
and for the State of Texas.

FIRM NO. 611
Expires 12/31/09